

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - -	X	
DAVINO WATSON,	:	
	:	14-CV-6459(JBW)
Plaintiff,	:	
	:	
-against-	:	
	:	United States Courthouse
	:	Brooklyn, New York
UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	
	:	Wednesday, September 30,
	:	2015
	:	10:00 a.m.
	:	
- - - - -	X	

TRANSCRIPT OF CIVIL CAUSE FOR BENCH TRIAL  
BEFORE THE HONORABLE JACK B. WEINSTEIN  
UNITED STATES SENIOR DISTRICT COURT JUDGE

A P P E A R A N C E S:

For the Plaintiffs: HOLLAND & KNIGHT  
BY: MARK. A. FLESSNER, ESQ.  
ROBERT J. BURNS, ESQ.  
MARK FLEMING, ESQ.

For the Defendants: KELLY T. CURRIE, ESQ.  
UNITED STATES ATTORNEY  
BY: JOSEPH A. MARUTOLLO, ESQ.  
JAMES R. CHO, ESQ.

Court Reporter: FREDERICK GUERINO, CSR  
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produced by Computer-aided Transcription.

1 Case on trial: Davino Watson v. United States of  
2 America.

3 THE COURT: Do we have the father's file in  
4 evidence?

5 Doesn't he have a file?

6 MR. FLESSNER: I don't think it's in evidence, not  
7 the entire file.

8 THE COURT: I would like to put it in evidence, if  
9 I may.

10 MR. FLESSNER: We'll get it together for you.

11 THE COURT: Okay. Do we have a witness?

12 MR. FLESSNER: We have a couple of things that we  
13 would like to talk about beforehand.

14 THE COURT: Happy to.

15 MR. FLESSNER: My colleague has a clarification  
16 question about your order that you issued yesterday.

17 MR. FLEMING: We were trying to seek clarification  
18 with respect to the negligence claim. It's our reading of  
19 the opinion that the negligence claim as to ICE's actions has  
20 been dismissed --

21 THE COURT: As to what actions?

22 MR. FLESSNER: As to ICE's actions. So the  
23 unlawful detention period that, as to our theory of  
24 negligence, that has been dismissed because there being no  
25 private analogue as to a reasonable investigation, and we

1 would respectfully submit that that was -- with respect to  
2 our claim against ICE's negligence, that it was the  
3 government's characterization of it being unreasonableness of  
4 an investigation.

5 THE COURT: Well, if you have anything that you  
6 want to say about it, give me a brief or a letter. I don't  
7 want an oral presentation.

8 MR. FLEMING: Okay, we can do that.

9 THE COURT: Respectfully.  
10 Anything else?

11 MR. FLESSNER: Yes. I will deal with the exhibits.  
12 We want to admit all of our exhibits, and I don't  
13 know how many the government is objecting to.

14 MR. FLEMING: About six or seven.

15 MR. FLESSNER: We move to admit all of our  
16 exhibits.

17 THE COURT: Let me see the list.  
18 What are you objecting to?

19 MR. MARUTOLLO: Your Honor, we are objecting to  
20 Plaintiff's Exhibits 55 through 58.

21 THE COURT: All right.  
22 Why are you offering them?

23 MR. FLEMING: These are the United States citizens  
24 directives that your Honor cited to extensively within your  
25 order with respect to a motion to dismiss in summary

1 judgment. They remain highly relevant as to our false  
2 imprisonment claim, as to whether defendant's actions were  
3 privileged, and they continue to be very relevant as to the  
4 negligence claim and the duty that ICE had with respect to  
5 their requirement to follow those policies.

6 MR. MARUTOLLO: And, your Honor, you already ruled  
7 on Monday that these exhibits were not to be admitted for the  
8 first witness, Officer Andren, because he had not dealt with  
9 them.

10 Additionally, we would argue that the next two  
11 witnesses the government will be calling, whose involvement  
12 had nothing to do with these directives, predated these  
13 directives, in other words, that these exhibits should not be  
14 used for these officers when their involvement in the case  
15 had -- you know, their involvement in the case ended prior to  
16 these directives even being issued.

17 We also argued on the whole that the directives  
18 should not be admitted into evidence for the reasons set  
19 forth in our motion, namely that we think this creates a  
20 false standard, when these are guidelines, not government  
21 regulations, not statutes, and it creates a false standard  
22 for which the government is being forced to raise of their  
23 level of care.

24 MR. FLESSNER: This whole motion has been briefed  
25 by both sides, and you have those briefs. There will be

1 witnesses who will testify extensively about these  
2 directives. Mr. Phillips will testify about them.  
3 Mr. Newman will testify about them.

4 THE COURT: All right. They are admitted.

5 MR. MARUTOLLO: We also object to Plaintiff's  
6 Exhibit 63.

7 THE COURT: What is the objection?

8 MR. MARUTOLLO: The objection is, your Honor, that  
9 this is not relevant and a waste of the Court's time, because  
10 this e-mail addresses the internal ICE's database regarding  
11 information that was placed into the database after the  
12 plaintiff had already been issued his Certificate of  
13 Citizenship, and, as the plaintiff testified on Monday, no  
14 employers could access this database. This database is  
15 completely internal database, and having this exhibit in  
16 evidence would only serve to again waste the Court's time and  
17 would be prejudicial to the government, because it's  
18 irrelevant to the case at hand.

19 MR. FLEMING: Your Honor, we remain convinced that  
20 this is very probative evidence with respect to USCI's  
21 negligence in this case, that for a full year after they  
22 issued the Certificates of Citizenship, that their database  
23 didn't reflect that citizenship.

24 THE COURT: I will take it. Admitted.

25 (Whereupon, Plaintiff's Exhibit 63 is received and

1 marked into evidence, as of this date.)

2 MR. MARUTOLLO: Your Honor, we would also  
3 object to Plaintiff's Exhibit 61.

4 THE COURT: On what ground?

5 MR. MARUTOLLO: On the ground that -- and also on  
6 Exhibit 65, based for the same reasons that these exhibits  
7 are e-mailed between attorneys, and we believe that they are  
8 subject to attorney/client privilege, that they are attorney  
9 work product, and they should not be entered into evidence in  
10 this case.

11 MR. FLEMING: Your Honor, it's our position they  
12 waived that privilege in producing them. They also have been  
13 redacted. But what they do show with respect to Exhibit 61  
14 is USCI's knowledge on November 22, 2011, and their  
15 determination on that date that Mr. Watson was a citizen and  
16 thus triggering their negligence.

17 THE COURT: They are admitted.

18 MR. MARUTOLLO: Your Honor, we would make the same  
19 argument with respect to Exhibit 79, which is another e-mail.  
20 These are attorney communications and prejudices the  
21 government.

22 MR. FLEMING: Your Honor, they did not raise that  
23 objection.

24 THE COURT: What is your substantive response?

25 MR. FLEMING: It's the same that Exhibit 61 comes

1 from, and it shows knowledge on November 22, 2011, both as to  
2 ICE and USCI's knowledge of their determination of him being  
3 a citizen on that date.

4 THE COURT: Admitted.

5 MR. MARUTOLLO: We didn't raise the objection  
6 because the defendant didn't file --

7 THE COURT: I don't care whether you raised it  
8 or not.

9 MR. MARUTOLLO: We would also object to Plaintiff's  
10 Trial Exhibits 93 through 100, and 102. These are all  
11 deposition transcripts of witnesses at trial -- I'm sorry,  
12 during discovery. We think this is in large part a lot of  
13 this information is irrelevant, and these witnesses we intend  
14 to call as witnesses at trial. So it would be duplicative.

15 THE COURT: Well, if all of these witnesses  
16 are going to be called, I don't want the deposition  
17 separately. When the witness comes in, you can use them. So  
18 you are asking for what numbers?

19 MR. MARUTOLLO: Numbers 93 through 100, and then  
20 Exhibit 102. Those are, I believe, all of the deposition  
21 transcripts.

22 THE COURT: All right. Those are excluded, except  
23 as I just noted.

24 MR. MARUTOLLO: The last exhibit, your Honor, we  
25 object to is Plaintiff's Exhibit 104, which is a production

1 cover letter that I wrote in July.

2 THE COURT: I don't have 104 on the list.

3 (Whereupon, Judge is handed a document.)

4 MR. FLEMING: Your Honor, we would just ask that  
5 the government stipulate that the numbers dated there, the  
6 Bates range there, is the full Plaintiff's alien file.

7 MR. MARUTOLLO: That's fine, your Honor. We would  
8 just note that we had also produced the redacted version as  
9 well with different Bates numbers. Again, that is the A file  
10 was produced Bates numbers US 219 through US 2534.

11 THE COURT: Admitted only for that purpose.

12 MR. MARUTOLLO: Your Honor --

13 MR. FLESSNER: Are you done with the exhibits?

14 MR. MARUTOLLO: Yes, we are done with the exhibits.

15 MR. FLESSNER: The second thing or third thing, I  
16 guess, your Honor, is we need to make, at the end of Monday  
17 afternoon, you had suggested that we make more progress with  
18 respect to stipulations.

19 THE COURT: Yes.

20 MR. FLESSNER: There are letters here that were  
21 exchanged. We have about ten of the Government's  
22 stipulations that we are still objecting to for accuracy.  
23 They objected to about two-thirds of our stipulations. I  
24 thought it would be useful for you to see the letters that  
25 showed the objections and the reasons and basis for them.



1 THE COURT: No, I'm not going to get involved.  
2 Either you stipulate or you don't. If you don't stipulate, I  
3 will have to make a ruling on admissibility.

4 MR. FLESSNER: Okay.

5 MR. MARUTOLLO: We would note, your Honor, we did  
6 stipulate to 85 faxes.

7 THE COURT: Well, if you stipulated to them, give  
8 me the stipulation. If it's not we'll have to at trial.

9 MR. FLESSNER: Finally, you were talking about the  
10 advisory jury. We did a little research on that, and there's  
11 pretty clear Second Circuit law. The Second Circuit has held  
12 "where the jury has found a Constitutional violation, and  
13 there's no genuine dispute that the violation resulted in  
14 some injury to the plaintiff, the plaintiff is entitled to an  
15 award of compensatory damages as a matter of law, which can  
16 be determined by the judge."

17 And there's case law that says: "Accepting  
18 the jury's conclusion that Martinez was falsely arrested  
19 during a typical morning commute and unlawfully held for a  
20 period of time, the award of \$160,000 is not inconsistent  
21 with other false arrest awards."

22 So, in other words, there's case law that says  
23 you should look at other awards in the region, and we have a  
24 survey of awards given in the New York area, based on all of  
25 that.

1 THE COURT: All right.

2 MR. FLESSNER: We can give you a letter on  
3 that.

4 THE COURT: I prefer a letter.

5 MR. FLESSNER: Sure.

6 MR. MARUTOLLO: And, your Honor, just to follow up  
7 with that same issue. We had asked the plaintiff's attorneys  
8 last night regarding their position on whether they agreed to  
9 an advisory jury. I know we hadn't gotten a chance to speak  
10 about it yet. The government would like an opportunity to  
11 also file a letter regarding our position opposing the  
12 advisory jury.

13 THE COURT: I will hear them both. If I had a  
14 jury, I wouldn't tell the jury what the other courts have  
15 done. They'll have to make their decision based on their own  
16 conclusions. But I will take all of this into account,  
17 because I will make the decision.

18 MR. FLESSNER: Okay.

19 THE COURT: And I think all of those cases are  
20 quite different from this one.

21 MR. MARUTOLLO: Your Honor, we also have one point  
22 to raise.

23 On Monday, during Monday's trial, your Honor  
24 indicated that you are only to be trying this case on  
25 negligence, and you said on page 129 of the transcript, again

1 you are only trying it on negligence. We just want to be  
2 clear, the false imprisonment claim has been dismissed from  
3 this case, and the only claim remaining in this case is --

4 THE COURT: If you want something more  
5 direct -- I've written extensively. Do you object to  
6 anything in the memorandum that I issued yesterday?

7 MR. MARUTOLLO: Well, your Honor, we were just  
8 seeking clarification because --

9 THE COURT: Then ask for it in a letter. I'm  
10 not going to give you off-the-top-of-my-head decisions that  
11 are critical, if you don't mind.

12 MR. MARUTOLLO: We'll issue a letter, your Honor.

13 THE COURT: Okay.

14 Call your next witness, please.

15 MR. CHO: We call Deportation Officer Juan Estrada.

16 J U A N E S T R A D A,  
17 called as a witness, having been first duly sworn,  
18 testifies as follows:

19 THE LAW CLERK: Please have a seat  
20 State and spell your last name for the record.

21 THE WITNESS: Juan Estrada, E-s-t-r-a-d-a.

22 DIRECT EXAMINATION

23 BY MR. CHO:

24 Q Good morning, Officer Estrada.

25 A Good morning.

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1 Q By whom are you employed?

2 A Department of Homeland Security, Immigration and Customs  
3 Enforcement.

4 Q Is that also known as ICE?

5 A Yes.

6 Q What is your current title?

7 A Deportation Officer.

8 Q How long have you worked as a deportation officer?

9 A Since 2006.

10 Q Okay.

11 How long have you worked in Immigration  
12 Services?

13 A Since 1997.

14 Q Can you briefly describe your employment history?

15 A Sure.

16 From 1997 to 2002, I was an immigration  
17 inspector at John F. Kennedy Airport.

18 From 2002 until 2006, I was a criminal  
19 investigator for Immigration.

20 Q And after that position, what position did you hold?

21 A From 2006 to the present, Deportation Officer.

22 Q Now, in 2008, what was your position?

23 A Deportation Officer.

24 Q And in 2008, where were you based?

25 A At the Castle Point, New York office.

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1 Q In 2008, who was your supervisor?

2 A Michael Ortiz.

3 Q As a deportation officer, what were your duties?

4 A I worked for the Criminal Agent Program. The duties of  
5 the Criminal Agent Program is to identify, interview, and  
6 investigate criminal aliens that are in the state prison  
7 system, the federal prison system, and the county jails.

8 Q Now, let's talk about your training.

9 Have you received legal training related to  
10 your work in Immigration Services?

11 A I went to the Academy, Immigration Officer's Academy.

12 Q After you went to the Academy, what other legal training  
13 did you receive?

14 A I get on-the-job training, refresher training, Fourth  
15 Amendment training. We also do virtual university courses.

16 Q Are you familiar with removal proceedings?

17 A Yes.

18 Q Are what are removal proceedings?

19 A Removal proceedings are conducted in front of an  
20 immigration judge to determine whether a foreign born  
21 national will be deported from the U.S. or not.

22 Q What is the role of the immigration judge in removal  
23 proceedings?

24 A They are the ones that make the decision whether a  
25 person is going to get deported or not.

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1 Q What role does the Immigration judge have with respect  
2 to an individual's detention?

3 A They can decide whether a person stays detained or not.

4 Q Now, are you familiar with Davino Watson?

5 A Yes, I am.

6 Q And you got Davino Watson's case after it was removed by  
7 Eric Andren; is that right?

8 A Yes.

9 Q When you got the case. What were you asked to do?

10 A I was asked to write his case.

11 Q Okay.

12 What does that mean, explain to the Court what  
13 writing the case means?

14 A Well, writing a case is issuing the charging document in  
15 order to place Mr. Davino into removal proceedings.

16 Q Now, when you go about writing the case, how do you  
17 treat the case?

18 A With a lot of care.

19 Q Why is that?

20 A These are people's lives you are talking about.

21 Q Okay.

22 Now, with respect to Davino Watson, what did  
23 you do with respect to Davino Watson's case?

24 A When I was assigned signed that case by the supervisor,  
25 I reviewed Mr. Davino Watson's file, I reviewed the file for

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1 Hopeton Watson, and Clare Watson.

2 Q Do you recall any other documents you reviewed?

3 A Yes. I reviewed the Certificate of Disposition, the rap  
4 sheet, the Immigration database printouts, and his criminal  
5 history.

6 Q Okay.

7 Now, can you explain to the Court how you  
8 looked at the files?

9 A Basically you open the file and you go page by page.

10 Q Okay.

11 Now, after you reviewed the files you just  
12 described, what did you do?

13 A After I determined that Mr. Davino Watson was a  
14 deportable alien, I opened the case in our system in order to  
15 create the charging document.

16 Q You said you found him to be a deportable alien.

17 How did you come to that conclusion?

18 A Well, Mr. Davino Watson is a foreign born national. He  
19 was born in Jamaica. He was also convicted of two deportable  
20 offenses. He was convicted of attempted criminal sale of  
21 cocaine in the third degree, and attempted robbery in the  
22 second degree. Those are deportable offenses. In his file,  
23 there was no evidence that he was a U.S. citizen.

24 Q What made you come to the conclusion that there was no  
25 evidence that he was a U.S. citizen?

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1 A There was no Certificate of Citizenship for Mr. Davino  
2 Watson.

3 Q Now, is there any other/OLD reason why you determined  
4 that he was not a U.S. citizen, other than looking at  
5 Davino's file?

6 A That's the main reason. He didn't have a Certificate of  
7 Citizenship.

8 Q Okay.

9 Now, if you are aware that Davino Watson was  
10 claiming that he was a U.S. citizen, what would you have  
11 done?

12 A I'd review his file, like I said, and found no evidence,  
13 so.

14 Q After you reached your determination, what did you do?

15 A Like I said, I opened the case --

16 THE COURT: Excuse me. I don't think you answered  
17 the question.

18 If he had claimed citizenship, and you were  
19 aware of that claim, the question is, as I understood it,  
20 would your determination have been the same at that point?

21 THE WITNESS: Yes.

22 THE COURT: You would have declared him  
23 deportable?

24 THE WITNESS: Yes, sir.

25 BY MR. Cho:



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1 Q Explain to the Court why that's the case?

2 A When I reviewed his file, there was no evidence in that  
3 file that he was a U.S. citizen. And he was a deportable  
4 alien, because he was a foreign born national, and he had  
5 criminal convictions that make him deportable from the United  
6 States.

7 Q You mentioned that you also reviewed the file for  
8 Hopeton Watson and Clare Watson.

9 What effect, if any, would that have had in  
10 your determination?

11 A I reviewed those files to see what the status was, and  
12 there was no evidence in those files either that, you know,  
13 that they were citizens.

14 Q Okay.

15 You mentioned earlier that you prepared  
16 charging documents; is that right?

17 A Yes.

18 Q And if you can turn to Plaintiff's Exhibit 70 in the  
19 white binder.

20 (Pause)

21 Q Are you at Plaintiff's Exhibit 70?

22 A Yes.

23 Q Okay.

24 Do you recognize Exhibit 70?

25 A Yes, I do.

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1 Q Okay.

2 What is that?

3 A That's Form I-213, Record of Deportable Inadmissible  
4 Alien.

5 Q Your signature appears at the bottom of the page?

6 A Yes.

7 MR. CHO: We offer Plaintiff's Exhibit 70 into  
8 evidence at this time.

9 THE COURT: Admitted.

10 (Whereupon, Plaintiff's Exhibit 70 is received and  
11 marked into evidence, as of this date.)

12 BY MR. CHO:

13 Q Now, what is the purpose of this I-213 form?

14 A That form is created in order to give a narrative of the  
15 case to the attorneys, the supervisor, and ultimately the  
16 Immigration Judge.

17 Q Okay.

18 Now, if you turn to the second page of that  
19 same exhibit. The last paragraph starting with alien and  
20 deportability.

21 What is that section about?

22 A It is about where he was born and what his current  
23 status is.

24 Q And you typed up that paragraph?

25 A Yes, I did.

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1 Q What was the basis for the information that you typed up  
2 in there?

3 A It was based on the review that I conducted in Mr.  
4 Davino's file, and Hopeton Watson's and Clare Watson's files.

5 Q If you can turn to Government Exhibit WW in the black  
6 binder.

7 Showing you Government Exhibit WW.

8 Do you recognize this document?

9 A Yes, I do.

10 Q What is this document?

11 A This is Form I-265. It is the Notice to Appear Bond,  
12 and Custody Processing Sheet.

13 Q And did you fill out part of this form?

14 A Yes, I did.

15 MR. CHO: We offer Government Exhibit WW into  
16 evidence.

17 THE COURT: What is blacked out here?

18 MR. CHO: The name of the attorney is redacted.

19 THE COURT: The name of whose attorney?

20 MR. CHO: Well, perhaps the witness can explain.

21 THE COURT: Yes.

22 Q Sir, if you look at Section D of Exhibit WW.

23 THE COURT: C and D.

24 THE WITNESS: That would be the immigration  
25 attorney's approval of the case. They sign this form when

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1 they approve a case for removal proceedings.

2 THE COURT: Well, why is that redacted?

3 MR. CHO: Well, at the time we redacted the name of  
4 the attorney.

5 THE COURT: Why?

6 MR. CHO: On privilege grounds.

7 THE COURT: On what?

8 MR. CHO: On privilege grounds.

9 THE COURT: Why is that privileged?

10 MR. CHO: Well, we can substitute the name.

11 THE COURT: Yes, substitute a redacted  
12 document. I don't see the privilege.

13 BY MR. CHO:

14 Q Officer Estrada, can you explain why --

15 THE COURT: As I see it, the attorney himself  
16 may participate in the negligent decision. He's part of the  
17 bureaucracy, isn't he?

18 MR. CHO: Your Honor, I think we have addressed the  
19 issue. I think in your decision as well, to the extent these  
20 are law enforcement officials, they are privileged.

21 THE COURT: Law enforcement officials are  
22 privileged?

23 MR. CHO: They are exempt, as you noted in your  
24 decision on Monday.

25 THE COURT: This was an attorney.

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1 MR. CHO: No, this isn't an attorney, the person  
2 who signed that form.

3 THE COURT: Yes. Are you conceding that?

4 MR. MARUTOLLO: No. I mean, we've argued all along  
5 that the name of these attorneys who are involved are not  
6 privileged. That's an absurdity. But the government has  
7 been very insistent about that.

8 MR. CHO: Well, we unredacted --

9 THE COURT: Well, either submit a brief or  
10 unredact it, because on the face of it, I'm not accepting the  
11 government's view, subject to seeing your brief.

12 MR. CHO: Okay.

13 BY MR. CHO:

14 Q Now, Officer Estrada, could you explain why the attorney  
15 would have reviewed this form?

16 A This form contains the allegations and charges against  
17 Mr. Davino Watson.

18 Q What was the role of the attorney in reviewing this  
19 form?

20 A They provide legal sufficiency for our cases.

21 Q Could you explain what legal sufficiency means?

22 A Legal sufficiency is their approval or the go-ahead to  
23 proceed with the removal proceedings.

24 Q What was the attorney's determination with respect to  
25 this case?

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1 A Well, after the attorney reviewed all the files,  
2 Mr. Davino's file, Hopeton Watson's file, and Clare Watson's  
3 file, and all the supporting documentation, they approved the  
4 case.

5 Q Okay.

6 THE COURT: They approved deportation?

7 THE WITNESS: The deportation hearing, sir.

8 THE COURT: A deportation hearing or deportation?

9 THE WITNESS: No, deportation hearing, sir.

10 THE COURT: So they sent it on for a hearing.

11 THE WITNESS: They sent it on to the  
12 Immigration judge.

13 THE COURT: I see. Thank you.

14 BY MR. CHO:

15 Q All right.

16 Now, after the attorney made his  
17 determination, what did you do with respect to the file?

18 A I printed the Notice to Appear, which is the I-862; the  
19 I-200, which is the Warrant of Arrest; the 286, which is the  
20 Custody Determination; and the Immigration Detainer for the  
21 facility, and I gave that, along with all the files, and the  
22 supporting documentation to my supervisor for his signature.

23 Q Who was your supervisor at that time?

24 A Michael Ortiz.

25 Q I will show you the documents you just referenced.

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1 If you can turn to Government Exhibit X.

2 THE COURT: You are offering WW?

3 MR. CHO: Yes.

4 THE COURT: Admitted.

5 (Whereupon, Government's Exhibit WW is  
6 received and marked into evidence, as of this date.)

7 BY MR. CHO:

8 Q Officer Estrada, I'm showing you what is marked as  
9 Government Exhibit X.

10 Do you recognize this document?

11 A Yes.

12 Q Is this the Notice to Appear that you just referenced?

13 A Yes, it is.

14 Q Who filled out this form, I-862?

15 A I did.

16 Q What is the purpose of the Notice to Appear?

17 A The Notice to Appear is the document that the  
18 Immigration judge will use, you know, to get information  
19 about the case, like the charges, the criminal conviction,  
20 and the status of Mr. Davino Watson.

21 MR. CHO: All right.

22 We move for the admission of Government  
23 Exhibit X.

24 THE COURT: Admitted.

25 (Whereupon, Government Exhibit X is received

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1 and marked into evidence, as of this date.)

2 MR. BURNS: Your Honor, if I may. I'm not sure if  
3 we are talking about the same document.

4 THE COURT: You're not sure of what?

5 MR. BURNS: I think we have different documents  
6 that are designated as --

7 MR. CHO: Government Exhibit X is the form I-862.

8 THE COURT: It is a two-page document, Notice  
9 to Appear.

10 MR. BURNS: That's not what they gave us as  
11 Government Exhibit X.

12 THE COURT: Well, get it straighten out. You  
13 can use the Court's, if you want, for cross.

14 MR. FLESSNER: Okay. We'll figure it out. They  
15 displayed it wrong here.

16 THE COURT: All right. Proceed.

17 BY MR. CHO:

18 Q Now, if you turn to Plaintiff's Exhibit 71.

19 Officer Estrada, do you recognize Plaintiff's  
20 Exhibit 71?

21 A Yes, I do.

22 Q What is that?

23 A This is the Warrant for Arrest of the alien, the I-200.

24 Q Was it signed by your supervisor?

25 A Yes.



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1 Q What is the purpose of this form?

2 A This is to inform in this case Mr. Davino Watson that he  
3 can be taken into ICE custody.

4 MR. CHO: We move for Plaintiff's Exhibit 71.

5 THE COURT: Admitted.

6 (Whereupon, Plaintiff's Exhibit 71 is received  
7 and marked into evidence, as of this date.)

8 MR. FLESSNER: Your Honor, subject to --  
9 there's another redaction on this document that we'll ask you  
10 to remove.

11 THE COURT: Remove it for redaction.

12 MR. CHO: Okay.

13 (Pause)

14 BY MR. CHO:

15 Q Turning to Plaintiff's Exhibit 33.

16 Do you recognize Plaintiff's Exhibit 33?

17 A Yes, I do.

18 Q Okay.

19 What is Plaintiff's Exhibit 33?

20 A This is the Form I-286, Notice of Custody Determination.

21 Q Okay.

22 Is this a document that you prepared?

23 A Yes.

24 MR. CHO: We move for the admission of  
25 Plaintiff's Exhibit 33.

J Estrada - Direct/Cho

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1 MR. FLESSNER: No objection.

2 THE COURT: Admitted.

3 (Whereupon, Plaintiff's Exhibit 33 is received and  
4 marked into evidence, as of this date.)

5 BY MR. CHO:

6 Q Now, turn to Plaintiff's Exhibit 54.

7 Officer Estrada, I'm showing you Plaintiff's  
8 Exhibit 54 already in evidence. If you turn to the first  
9 page of this document, do you recognize the first page?

10 A Yes.

11 Q What is this?

12 A This is the I-247, the Immigration Detainer.

13 Q You testified that you printed off the charging  
14 documents; is that right?

15 A Yes.

16 Q Now, after you printed those off, what did you do?

17 A I gave them, along with all three files, Mr. Davino  
18 Watson's file, Hopeton and Clare Watson's files, and all of  
19 the supporting documentation to my supervisor, Michael Ortiz.

20 Q What did Michael Ortiz do with the files?

21 A After he reviewed them, he signed the I-862, the Notice  
22 to Appear, the Warrant of Arrest, and the Custody  
23 Determination Form, and he forwarded the documents and the  
24 files to the Buffalo office?

25 Q Okay.

J. Estrada - Cross/Burns

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1           What determination did Mr. Ortiz make with respect  
2   to Mr. Watson's case?

3           MR. BURNS: Objection, your Honor, hearsay,

4           THE COURT: Overruled.

5   A     He approved the Notice to Appear and forwarded it to the  
6   Buffalo office.

7   Q     Okay.

8           What date was your last involvement in this case?

9   A     April 10, 2008.

10          THE COURT: Will you unredact all of these  
11 documents when you get a chance.

12          What was that date again, sir?

13          THE WITNESS: April 10, 2008.

14          THE COURT: Thank you.

15          MR. CHO: No further questions, your Honor.

16          THE COURT: Thank you.

17          Cross-examination.

18   CROSS-EXAMINATION

19   BY MR. BURNS:

20   Q     Good morning, Officer Estrada.

21   A     Good morning.

22   Q     Sir, are you familiar with a database called the Central  
23 Index System?

24   A     Yes, I am.

25   Q     That's often shorten to CIS, correct?

J. Estrada - Cross/Burns

193

1 A Yes.

2 Q CIS contains immigration status data for all individuals  
3 with immigration records; is that correct?

4 A Yes.

5 Q And searching CIS is one of the things that ICE does as  
6 a matter of course in investigating someone's citizenship,  
7 correct?

8 A Yes.

9 Q And, specifically, whoever at ICE is conducting the  
10 investigation runs a CIS search on the subject, correct?

11 A Correct.

12 Q And also on any relating persons, correct?

13 A Yes.

14 Q And relating persons could include in certain cases the  
15 subject's parents, correct?

16 A Yes.

17 Q And that would be because of the possibility that a  
18 subject derives citizenship through his parents, correct?

19 A Yes.

20 Q And, sir, there are multiple ways you can search CIS; is  
21 that fair?

22 A Yes.

23 Q You can search under an individual's name?

24 A Yes.

25 Q You can also search first, middle, or last name in any

J. Estrada - Cross/Burns

194

1 combination?

2 A Yes.

3 Q You can search by date of birth?

4 A In conjunction with the name, yes.

5 Q Date of birth only in conjunction with a name?

6 A Yes. You can't just put the date of birth by itself.

7 Q You can search social security number; is that correct?

8 A Yes.

9 Q And if you have it, you can search an individual's alien  
10 file number, correct?

11 A Correct.

12 Q So, if you have an individual's alien file number and  
13 you plug it into CIS, the individual's CIS entry should just  
14 pop right up, correct?

15 A Yes.

16 Q And that would tell you right away whether that person  
17 is a citizen or not, correct?

18 A If the system had been updated to show the citizenship  
19 status, yes.

20 Q It would tell you the current immigration status of that  
21 individual as reflected in CIS, correct?

22 A Correct.

23 Q And if you don't have a person's alien file number, you  
24 can search any of the CIS fields in conjunction, correct?

25 A Yes.

J. Estrada - Cross/Burns

195

1 Q So if you have an individual with a common name, you can  
2 add some additional search fields to try to make sure you get  
3 the correct one; is that correct?

4 A Yes.

5 Q And, sir, it is the responsibility of the person who  
6 conducts the initial interview to run these CIS searches; is  
7 that correct?

8 A Yes.

9 Q In this case it was Officer Andren?

10 A Yes.

11 Q And where a CIS search results in multiple hits, an  
12 interviewer would be responsible for clearing that up; is  
13 that correct?

14 A Yes.

15 Q And it's would be the interviewer's responsibility to  
16 determine which of the multiple hits is the correct  
17 individual, correct?

18 A Yes.

19 Q Sir, you testified that your involvement with Davino  
20 Watson's case began when you were first asked to write up  
21 this file, correct?

22 A Yes.

23 Q And by that point in time Officer Andren had already  
24 interviewed Davino Watson, correct?

25 A Correct.

J. Estrada - Cross/Burns

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1 Q And by the time you got the file, Officer Andren had  
2 already run CIS database searches; is that correct?

3 A Yes.

4 Q And he had already obtained Mr. Watson's Presentence  
5 Investigation Report, correct?

6 A Yes.

7 Q And by the time you got the file, Officer Andren had  
8 already requested and obtained certain alien files, correct?

9 A Yes.

10 Q And, sir, alien files are the paper record of an  
11 individual's immigration history, correct?

12 A Yes.

13 Q So documents that are relevant to a person's immigration  
14 status in the U.S. are put in his A file; is that correct?

15 A Yes.

16 Q And Mr. Andren obtained the complete A file of Davino  
17 Watson, correct?

18 A Yes.

19 Q And the A file of an individual named Hopeton Watson,  
20 correct?

21 A Yes.

22 Q And Officer Andren pulled these materials together and  
23 put them into what I believe you testified at your deposition  
24 was a Phase 1 packet, correct?

25 A Yes.

J. Estrada - Cross/Burns

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1 Q And the Phase I packet included all of the A files that  
2 had been collected, correct?

3 A Yes.

4 Q And the Presentence Investigation Report?

5 A Yes.

6 Q And he delivered the Phase I packet to his supervisor?

7 A Yes.

8 Q Who then reviewed it and informed you that he had deemed  
9 it ready to write, correct?

10 A Yes.

11 Q And told you to write it up?

12 A Yes.

13 Q And you did so?

14 A Yes.

15 Q You took the Phase 1 packet and you turned it to the  
16 formal charging documents that you looked at on direct  
17 examination?

18 A Yes.

19 Q And in doing this, you relied on the documents that were  
20 included within the Phase 1 packet that Mr. Andren had  
21 compiled, correct?

22 A Yes.

23 Q And this included Mr. Watson's A file?

24 A Yes.

25 Q You testified that you reviewed Mr. Watson's A file in



1 writing up the terms about him, correct?

2 A Yes.

3 Q You testified that you reviewed it page by page?

4 A Yes.

5 Q And you were also provided with an A file for an  
6 individual named Hopeton Livingston Watson, correct?

7 A Yes.

8 Q You reviewed that document also in the course of writing  
9 up the order charging documents, right?

10 A Yes.

11 Q And, sir, as part of the Phase I packet, you were also  
12 provided with Mr. Watson's Presentence Investigation Report,  
13 correct?

14 A Yes.

15 Q And if I could ask you to flip to Plaintiff's  
16 Exhibit 101, which is already in evidence.

17 Sir, this is the Presentence Investigation  
18 Report that were you provided with, correct?

19 A Yes.

20 Q And you reviewed this, in writing the charging  
21 documents, correct?

22 A Yes.

23 Q And you see, sir, that this document identifies  
24 Mr. Watson as a United States citizen, correct?

25 A Yes.

J. Estrada - Cross/Burns

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1 Q And it states, doesn't it, that Mr. Watson, before he  
2 was incarcerated, resided with his mother and father,  
3 correct?

4 If I could draw your attention to the third  
5 column, the final column on the right of Plaintiff's  
6 Exhibit 101.

7 A Yes, I see it.

8 Q Okay.

9 So it does state that Mr. Watson was  
10 identified as having lived with his mother and father,  
11 correct?

12 A Yes.

13 Q And also on the document it gives an address in  
14 Brooklyn?

15 A Yes.

16 Q And a phone number, correct?

17 A Correct.

18 Q (718) 377-7027, correct?

19 A Correct.

20 Q Sir, at no point in your process of drafting the  
21 charging documents against Mr. Watson did you ever interview  
22 Mr. Watson, did you?

23 A No.

24 Q You never contacted Mr. Watson's parents, did you?

25 A No.

J. Estrada - Cross/Burns

200

1 Q You didn't search for any documents that weren't already  
2 in the Phase I packet, did you?

3 A No.

4 Q Sir, at the time that you were preparing the charging  
5 documents, you had access to the CIS system, correct?

6 A Yes.

7 Q You could have run a search, if you had wanted to?

8 A Yes.

9 Q But you didn't do so, correct?

10 A No.

11 Q No, that's not correct, or, no, that is correct?

12 A No, that's correct, I didn't do it.

13 Q And, sir, you, yourself, didn't do anything to confirm  
14 the accuracy of the information that was in the Phase I  
15 packet, did you?

16 A Well, I had all the evidence that I needed. I had  
17 Davino Watson's file, and Hopeton Watson and Clare Watson  
18 file, which he indicated these were his parents. So there  
19 was no further need to do anymore check.

20 Q You relied on the documents in the Phase 1 packet,  
21 period, correct?

22 A Yes.

23 Q You didn't do anything further, correct?

24 A Yes.

25 Q You didn't ask Mr. Andren any questions about what he

J. Estrada - Cross/Burns

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1 had done either, did you?

2 A No.

3 Q You didn't ask him what searches he had run?

4 A They were there, so, no.

5 Q You didn't ask him how he identified which Hopeton  
6 Watson, whether the Hopeton Watson was the correct Hopeton  
7 Watson, you didn't ask him that question, did you?

8 A No.

9 Q There was nothing preventing you from asking him those  
10 questions, correct?

11 A No.

12 Q You worked at the same office, correct?

13 A Yes.

14 Q Sir, you knew when you were preparing the charging  
15 documents that Mr. Andren had the phone number for Davino  
16 Watson's parents, correct?

17 A Yes.

18 Q And if I could draw your attention to Plaintiff's  
19 Exhibit 73.

20 Are you there, sir?

21 A Yes.

22 Q You saw Plaintiff's Exhibit 71 as part of the Phase I  
23 packet that you reviewed, correct?

24 A 71 or 73?

25 Q I'm sorry if I misspoke. 73?

J. Estrada - Cross/Burns

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1 A Yes.

2 Q So, let's try that again.

3 Sir, you saw Plaintiff's Exhibit 73 as part of  
4 the Phase I packet that you reviewed, correct?

5 A Yes.

6 Q And, sir, Plaintiff's Exhibit 73 gives a phone number  
7 for Davino Watson's parents, correct?

8 A Correct.

9 Q (718) 377-7027, correct?

10 A Correct.

11 Q Which is the same phone number we have already seen,  
12 correct?

13 A Yes.

14 Q Which is also the number on the Presentence  
15 Investigation Report, correct?

16 A Yes.

17 Q Which was also in the Phase 1 packet?

18 A Yes.

19 Q But when you were preparing the charging documents, you  
20 had no idea one way or the other whether Mr. Andren contacted  
21 Mr. Watson's parents to verify their information, did you?

22 A No.

23 Q There's nothing in the Phase I packet that you reviewed  
24 to suggest that Mr. Andren had in fact contacted Mr. Watson's  
25 parents, was there?

J. Estrada - Cross/Burns

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1 A Not that I can recall.

2 Q You never asked Mr. Andren whether he had done so, did  
3 you?

4 A No.

5 Q You, yourself, didn't make any attempt to call this  
6 number, did you?

7 A No.

8 Q Sir, if I could ask you to flip to Plaintiff's  
9 Exhibit 68.

10 THE COURT: Now, this number (718) 377-7027,  
11 was the one that turned out to be the number -- the correct  
12 number for the mother and father?

13 MR. BURNS: That's correct, your Honor.

14 THE COURT: That's conceded?

15 MR. MARUTOLLO: Yes, your Honor. That appears to  
16 be the number for the parents.

17 THE COURT: Okay. 73 and 68 are in evidence.

18 (Whereupon, Plaintiff's Exhibits 73 and 68 are  
19 received and marked into evidence, as of this date.)

20 BY MR. BURNS:

21 Q Sir, are you at trial exhibit -- Plaintiff's Exhibit 68?

22 A Yes.

23 Q You prepared this document, correct?

24 A The original one I did, yes.

25 Q The original one meaning you input the data into the

J. Estrada - Cross/Burns

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1 fields that then created this document; is that fair?

2 A Yes.

3 Q I believe Plaintiff's Exhibit 68 is already in evidence,  
4 your Honor, then I move it in.

5 THE COURT: All right.

6 BY MR. BURNS:

7 Q Specifically, sir, under the fields on the first page of  
8 Plaintiff's Exhibit 68 that reads fathers's name, you  
9 prepared the text in this box, correct?

10 A Yes.

11 Q And you identified Davino Watson's father as Hopeton  
12 Livingston Watson, correct?

13 A Yes.

14 Q Because that was the name on the A file that Mr. Andren  
15 had pulled for you, correct?

16 A Yes.

17 Q And on Plaintiff's Exhibit 68, you have an A file  
18 number, alien file number, for Hopeton Livingston Watson,  
19 correct?

20 A Yes.

21 Q And, again, that's because that was the number on the A  
22 file that Mr. Andren had pulled for you, correct?

23 A Yes.

24 Q Flipping to the second page of Plaintiff's Exhibit 68,  
25 under the heading Alienage Deportability.

J. Estrada - Cross/Burns

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1 Sir, you drafted the text in that section,  
2 correct?

3 A Yes.

4 Q And, specifically, you drafted the sentence that reads  
5 that Mr. Watson's parents "are nationals and citizens of  
6 Jamaica who are not naturalized", you drafted that, correct?

7 A Yes.

8 Q And you based that conclusion solely on the A files that  
9 were part of the packets that you reviewed for Mr. Andren,  
10 correct?

11 A Yes.

12 Q That was because the Hopeton Livingston Watson, whose A  
13 file you reviewed, wasn't a U.S. citizen, correct?

14 A Yes.

15 Q And the next sentence in the section reading Alienage  
16 and Deportability -- the next sentence reading Alienage and  
17 Deportability reads "no issue of derivation applies."

18 You wrote that sentence, correct?

19 A Yes.

20 Q And that sentence -- in that sentence you are referring  
21 to derivative U.S. citizenship, correct?

22 A Yes.

23 Q And you base that sentence solely on your understanding  
24 that Mr. Watson's parents weren't U.S. citizens, correct?

25 A Correct.



J. Estrada - Cross/Burns

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1 Q Because the individuals in the A files you had reviewed  
2 weren't U.S. citizens, correct?

3 Q Officer Estrada, you have since learned that in writing  
4 up Mr. Watson's charging documents, you were looking at the  
5 file for the wrong Hopeton Watson, correct?

6 A Yes.

7 Q And you since learned that Mr. Watson's father's name  
8 was Hopeton Ulando Watson, not Hopeton Livingston Watson?

9 A Yes.

10 Q And that Mr. Watson's father had a different A file  
11 number from the Hopeton Watson you were reviewing, correct?

12 A Yes.

13 Q You since learned that the Hopeton Watson, who is Davino  
14 Watson's actual father, is a United States citizen, correct?

15 A Yes.

16 Q And that Mr. Watson's father was naturalized on  
17 September 17, 2002, correct?

18 A Yes.

19 Q Which was several years before you were preparing the  
20 charging documents for Mr. Watson, correct?

21 A Yes.

22 Q But you never saw the Naturalization Certificate of  
23 Hopeton Ulando Watson, when you were drafting the charging  
24 documents, did you?

25 A No.

1 Q And you never knew, when you were drafting the charging  
2 documents, that Mr. Watson's father had naturalized back in  
3 2002, did you?

4 A No.

5 Q And if you had known these facts back in 2008, that  
6 would have made a difference, wouldn't it have?

7 A In what I wrote, yes, it would have made a difference.

8 Q And it would have proven that Mr. Watson was a citizen,  
9 correct?

10 A Not that certificate by itself, no.

11 Q Well, at the very least, sir, if you had known that  
12 Davino Watson's father was a citizen back in 2008, you would  
13 have had to inquire further, correct?

14 A Well, I would have drafted the same forms that I  
15 drafted, and consulted -- forwarded them to the attorneys for  
16 legal sufficiency.

17 Q Well, you certainly wouldn't have drafted, sir, on  
18 Plaintiff's Exhibit 68 the sentence that reads Davino  
19 Watson's "parents are nationals and citizens of Jamaica who  
20 were not naturalized," you wouldn't have drafted that  
21 sentence, correct?

22 A No.

23 Q And you wouldn't have drafted the following sentence  
24 that reads "no issue of derivation applies," would you have?

25 A No.

J. Estrada - Cross/Burns

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1 Q You would have had known more before you made a call one  
2 way or the other, correct?

3 A Yes.

4 Q Sir, if I could ask to you flip to Plaintiff's  
5 Exhibit 103.

6 Exhibit 103 is already in evidence, I believe.

7 THE COURT: Yes.

8 BY MR. BURNS:

9 Q And, sir, this document was produced to us as part of  
10 what's now has been stipulated to be Plaintiff's alien file.

11 Have you seen this document before?

12 A I saw it in the lawsuit paperwork, the package.

13 Q Did you see this document in 2008?

14 A No.

15 THE COURT: I haven't located it in my file.

16 MR. BURNS: I will pause, your Honor.

17 THE COURT: If you have an extra copy of 103? Thank  
18 you.

19 MR. BURNS: Do you have it, your Honor?

20 THE COURT: I do.

21 BY MR. BURNS:

22 Q I'm sorry, sir, if I have already asked this question,  
23 but I'm sorry that I didn't catch your answer.

24 Did you review this document back in 2008, when you  
25 were drafting the charging document for Davino Watson?

J. Estrada - Cross/Burns

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1 A I can't recall if I did or not.

2 Q It was in the A file, correct?

3 MR. CHO: Objection, your Honor. He's already  
4 answered the question. He's never seen this document before.

5 THE COURT: Who hasn't?

6 MR. CHO: Officer Estrada.

7 THE COURT: Yes. So, what is the significance of  
8 the objection? I don't understand.

9 MR. CHO: He testified that he saw the complaint.

10 THE COURT: Yes.

11 MR. CHO: Right, so.

12 MR. BURNS: The testimony, your Honor, is he  
13 reviewed the A file page by page. This was in it.

14 MR. CHO: Your Honor, if you look closely at the  
15 document, this is for Hopeton Ulando Watson. He said he  
16 looked at Hopeton Livingston's file.

17 MR. BURNS: No, your Honor. This document was  
18 stipulated to be part of the alien file for plaintiff Davino  
19 Watson, that this witness testified that he reviewed page by  
20 page.

21 MR. MARUTOLLO: Your Honor, that's not accurate.  
22 We stipulated that we produced the A file, which includes the  
23 number of documents that are in the course of the plaintiff's  
24 immigration detention. So the A file would include things  
25 that happened two years after Officer Estrada was involved in

J. Estrada - Cross/Burns

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1 the case.

2           Officer Estrada's testimony is he reviewed the A  
3 file that was produced to him. We never stipulated that the  
4 A file was produced and included documents that post-dated  
5 his review of it .

6           MR. BURNS: Your Honor, it was a 1998 document.

7           MR. MARUTOLLO: But there's no indication, and we  
8 certainly didn't stipulate, that this document, which was  
9 acquired in the course of the legal proceedings to figure out  
10 whether or not Hopeton was in fact, you know, the biological  
11 father, whether he had derivative citizenship, there's no  
12 indication, and the government certainly does not stipulate  
13 that this document was in the A file that was produced to  
14 Officer Estrada. This document was part of a number of other  
15 documents in this thousand page A file that was accumulated  
16 over the course that the plaintiff was in custody.

17           MR. BURNS: Your Honor, if I may.

18           This document was produced to us. The cover letter  
19 that we were looking at earlier this morning, Plaintiff's  
20 Exhibit 104, states: A copy of plaintiff's A file bears  
21 Bates stamp numbers US 298 to 2534. This document is  
22 squarely within that range. It's in Plaintiff's A file. The  
23 witness can say --

24           THE COURT: Excuse me. The government is not  
25 willing, as I understand it, stipulate that this document was

J. Estrada - Cross/Burns

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1 in the A file that this witness saw.

2 MR. MARUTOLLO: That's correct, your Honor. That A  
3 file also contains decisions from 2012 and 2013.

4 THE COURT: Okay.

5 So, I don't understand your point.

6 MR. BURNS: My point, your Honor, this document was  
7 dated 1998. It was an affidavit that was --

8 THE COURT: It should have been, is your  
9 contention, but if there's no indication that this witness,  
10 when he called for -- did you call for an A file at any time?  
11 Did you look at an A file?

12 THE WITNESS: Yes, sir.

13 THE COURT: Before you completed your report and  
14 write-up, correct?

15 THE WITNESS: Yes, sir.

16 THE COURT: Was this document, so far as you can  
17 tell, in any of the papers, that is 103, that you reviewed?

18 THE WITNESS: Yes.

19 THE COURT: Okay. At that time.

20 So he saw it. He says, now under oath.

21 MR. MARUTOLLO: I mean, your Honor, correct me if  
22 I'm wrong, he said a few moments ago he had not seen it.

23 THE COURT: He just said "yes."

24 Think about it. Look it over.

25 THE WITNESS: To be honest, I don't recall.

J. Estrada - Cross/Burns

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1 THE COURT: You don't recall, okay.

2 Proceed.

3 BY MR. BURNS:

4 Q Sir, a certain individual has only one A file, correct?

5 A In most instances, yes. They can have more than one.

6 Q Do you recall Davino Watson having multiple A files?

7 A No.

8 Q So you had one A file for Davino Watson, correct?

9 A Yes.

10 Q And you reviewed that A file, whatever was in Davino  
11 Watson's A file, you reviewed it, correct, page by page?

12 A Yes.

13 THE COURT: PA-103, when it refers to Hopeton  
14 Watson, is the correct Hopeton Watson?

15 MR. BURNS: That's correct.

16 THE COURT: The actual father.

17 MR. BURNS: That's correct, your Honor.

18 BY MR. BURNS:

19 Q And, sir, you don't know whether you saw this document  
20 back in 2008, you can't recall, but this document appears to  
21 be signed by Hopeton Ulando Watson on March 17, 1998?

22 A Yes.

23 Q And is it a fair reading of this document that this  
24 document was sworn by Hopeton Watson in connection with  
25 Davino Watson's immigration to the United States back in

J. Estrada - Cross/Burns

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1 1998?

2 A Yes.

3 Q So Hopeton Ulando Watson was saying he would provide  
4 support for Davino Watson in connection with Davino's  
5 application to immigrate to the United States, correct?

6 A Yes.

7 (Continued on the next page.)

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ESTRADA - CROSS / BURNS

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1 THE COURT: This document has the phone number  
2 718-377-7027. Is that the phone number on the documents that  
3 were available to the witness?

4 MR. BURNS: The Pre-sentence Investigation Report  
5 and --

6 THE COURT: The telephone number never changed.

7 MR. BURNS: That's correct, Your Honor. Same  
8 number.

9 THE COURT: Okay. Yes. Okay. That's the number on  
10 his Pre-sentence Report?

11 MR. BURNS: That's correct, and on Officer Andren's  
12 initial interview notes.

13 THE COURT: Okay.

14 BY MR. BURNS:

15 Q Officer Estrada, this document, Plaintiff's Exhibit 103,  
16 identifies Hopeton Watson's middle name as Ulando, correct?

17 A Yes.

18 Q And it provides Hopeton Ulando Watson's date of birth,  
19 correct?

20 A (Perusing document.) Yes.

21 Q And Hopeton Ulando Watson's Social Security Number,  
22 correct?

23 A (Perusing document.)

24 Q Well, it's a little tricky, sir, because for -- we've had  
25 to redact the Social Security Number for purposes of the

1 filing with the court, but if I could draw your attention  
2 halfway down. It says "Social Security Number" and there's a  
3 field that's blacked out. Do you see that?

4 A Yes.

5 Q And that would have contained the Social Security Number  
6 information, whatever was under the redaction, correct?

7 A Correct.

8 THE COURT: And it's stipulated, I take it, that  
9 that's the correct Social Security Number for the person  
10 stated?

11 MR. MARUTOLLO: Your Honor, I'm not sure we can  
12 stipulate that is Hopeton Ulando Watson's Social Security  
13 Number. I don't believe we have that information.

14 THE COURT: Well, isn't that your contention?

15 MR. BURNS: It is, Your Honor. We can verify that.

16 THE COURT: Well, verify it and stipulate. I don't  
17 think there's much doubt about it.

18 MR. FLESSNER: We have to know what the number is  
19 before we verify it.

20 MR. BURNS: Well, we were the ones who redacted this  
21 document, Your Honor, because of the filing with the court,  
22 the Social Security Number.

23 THE COURT: Then find out and stipulate. There  
24 should be no doubt about it.

25 BY MR. BURNS:

ESTRADA - CROSS / BURNS

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1 Q And, sir, Officer Andren (sic), Plaintiff's Exhibit 103  
2 also includes a phone number, correct?

3 A Yes.

4 Q For Hopeton Ulando Watson?

5 A Yes.

6 Q And as the Judge just observed, this is the same phone  
7 number that appears on the Pre-sentence Investigation Report,  
8 correct?

9 A Yes.

10 Q And on Officer Andren's initial notes of his interview  
11 with Davino Watson, correct?

12 A Yes.

13 Q Sir, if I can ask you to flip to the second page of this  
14 document, Plaintiff's Exhibit 103.

15 A (Complies.)

16 Q Sir, this document -- this page of the document actually  
17 includes Hopeton Ulando Watson's A Number, correct?

18 A Yes.

19 Q And that A number is A41458063, correct?

20 A Yes.

21 Q So sir, this document, Plaintiff's Exhibit 103, clearly  
22 refers to a different Hopeton Watson than the Hopeton Watson  
23 you had in your file in front of you, correct?

24 A Yes.

25 Q Middle names are different?

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1 A Yes.

2 Q A-File numbers are different?

3 A Yes.

4 Q But you didn't make any effort to resolve this  
5 discrepancy between these two Hopeton Watsons, did you?

6 A Yeah. I don't recall seeing this document, so --

7 Q So the answer is no, sir?

8 A No.

9 Q You made no effort to resolve the discrepancy?

10 A No.

11 MR. CHO: Objection, Your Honor; asked and answered.

12 BY MR. BURNS:

13 Q And you never called the phone number that's been  
14 identified three places in Davino Watson's A-File, correct?

15 A No.

16 Q The number that appears for Davino Watson's parents three  
17 times in Davino's A File.

18 MR. CHO: Objection, Your Honor; asked and answered.

19 MR. BURNS: I'll withdraw the question, Your Honor.

20 BY MR. BURNS:

21 Q And you never, sir, ran a CIS search for the A File  
22 Number that appears on second page of Plaintiff's Exhibit 103,  
23 did you?

24 A No.

25 Q And you testified earlier that if you had put this A File

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1 Number into CIS, Hopeton Ulando Watson's CIS file would have  
2 popped up, correct?

3 MR. CHO: Objection, Your Honor. That's not his  
4 prior testimony.

5 MR. BURNS: Well, I'll ask it a different way.

6 BY MR. BURNS:

7 Q If you had typed this A File Number that appears on the  
8 second page of Plaintiff's Exhibit 103 in CIS, Hopeton Ulando  
9 Watson's immigration status would have popped right up,  
10 correct?

11 MR. CHO: Objection, Your Honor; calls for  
12 speculation.

13 THE COURT: I'll allow it.

14 THE WITNESS: Yes.

15 THE COURT: Where are the documents for the other  
16 Hopeton Watson? Do we have them?

17 MR. BURNS: The Hopeton Livingston Watson, Your  
18 Honor?

19 THE COURT: Yes.

20 MR. BURNS: We've never seen them.

21 THE COURT: Did you look at those?

22 THE WITNESS: Back in 2008, yes.

23 THE COURT: You did look at them?

24 THE WITNESS: Yes.

25 THE COURT: Before you --

1 Well, I think we ought to look at them and see what  
2 they say, because they may be useful. Do we have them?

3 MR. MARUTOLLO: Your Honor, there was no request  
4 during discovery for Hopeton Livingston Watson's file.

5 THE COURT: Well, he looked at it.

6 MR. MARUTOLLO: That's true.

7 THE COURT: So let's get them. You can get them  
8 quickly through your CIS machinery for picking up these A  
9 Files.

10 MR. CHO: Your Honor, but I think the facts relating  
11 to Hopeton Livingston Watson are not in dispute. It's  
12 uncontested that Hopeton Livingston Watson's computer file is  
13 for an individual who was a Legal Permanent Resident LPR, and  
14 that's reflected in these documents.

15 THE COURT: Yes, but there may have been people with  
16 ages or background that were so apparently different or  
17 congruent with what the plaintiff was claiming as to either,  
18 if looked at, disabuse the investigator or confirmed the  
19 investigator. So I would like to see them.

20 You didn't -- did you look at them? You looked at  
21 them?

22 THE WITNESS: Yes, sir.

23 THE COURT: All right. And he looked at them, so  
24 I'd like to see them. Go get them, please.

25 BY MR. BURNS:

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1 Q Officer Estrada, if you had entered the A File Number  
2 that appears on the second page of Plaintiff's Exhibit 103  
3 into the CIS database in 2008, you would have confirmed that  
4 the Hopeton Ulando Watson was a United States citizen,  
5 correct?

6 MR. CHO: Objection; calls for speculation. How  
7 would he know if he typed in the A Number what information he  
8 would obtain.

9 THE COURT: That wasn't the question. If he typed  
10 in the proper A Number, would he have gotten this information.

11 MR. BURNS: Correct.

12 THE COURT: The machine doesn't think. It just  
13 turns it out, right?

14 MR. CHO: That's correct, Your Honor. But again,  
15 this is in 2008. He didn't know if he typed in that number,  
16 what the information was back in 2008 was going to come up at  
17 that time.

18 THE COURT: You may ask.

19 BY MR. BURNS:

20 Q Officer Estrada, if you had typed in the A Number that  
21 appears on the second page of Plaintiff's Exhibit 103 into the  
22 CIS database in 2008, you would have learned, would you not  
23 have, that Hopeton Ulando Watson was a United States citizen  
24 on that date?

25 A Only if the -- only if CIS had been updated with his

1 citizenship information.

2 Q Well, Mr. Hopeton Ulando Watson became a citizen in 2002,  
3 correct?

4 A Yeah, but that system is not always updated with the  
5 citizenship information.

6 THE COURT: Eight years -- six years later, it  
7 wouldn't be updated?

8 THE WITNESS: They started doing it after certain  
9 time. I don't remember what year it was.

10 THE COURT: I see.

11 BY MR. BURNS:

12 Q Sir, if I could ask you to flip forward to Plaintiff's  
13 Exhibit 92.

14 A (Complies.)

15 Q Do you that document in front of you?

16 A Yes.

17 Q This is a screen shot from CIS for Hopeton Ulando Watson,  
18 correct?

19 A Yes.

20 Q And if I could I draw your attention to the upper right  
21 hand corner of the document, it reads, "Nats date, 9-17-2002."  
22 Do you see that?

23 A Yes.

24 Q So in fact, the CIS database in fact did have the correct  
25 naturalization date for Hopeton Ulando Watson, correct?



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1 A Yes.

2 Q So if you had in 2008 typed in the A File Number for  
3 Hopeton Ulando Watson, you would have learned that Hopeton  
4 Ulando was naturalized on 9-17-2002, correct?

5 A Yes.

6 Q Sir, if I could ask you to briefly flip back to a  
7 document we were looking at earlier, which was Plaintiff's  
8 Exhibit 68. And specifically, the second page of that  
9 document under the heading "Alienage and Deportability."

10 A (Perusing document.)

11 MR. BURNS: I'm sorry. Strike this line of  
12 questioning. I'm sorry for the confusion. No need to look at  
13 document, sir.

14 BY MR. BURNS:

15 Q Officer Estrada, after you wrote the charging documents,  
16 you testified that you provided them to an ICE attorney,  
17 correct --

18 A Yes.

19 Q -- for sign-off, correct?

20 A Yes.

21 Q And which ICE attorney did you provide Hopeton -- did you  
22 provide Davino Watson's file to?

23 A Her name?

24 Q Yes, please.

25 A Laura Michalec.

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1 Q And could you spell the last name, please?

2 A M-I-C-H-A-L-E-C.

3 Q And aside from Ms. Michalec, did any other ICE attorneys  
4 review Mr. Watson's file?

5 A Not that I can recall.

6 Q And you provided Ms. Michalec with the documents you  
7 drafted, correct?

8 A Yes.

9 Q And you also provided her with the underlying phase one  
10 packet you received from Officer Andren, correct?

11 A From his supervisor, yeah.

12 Q So the entire phase one packet that you reviewed, you  
13 passed along to Ms. Michalec, correct?

14 A Yes.

15 Q And that included Davino Watson's A File, correct?

16 A Yes.

17 Q And the A Files that you had for the individual named  
18 Hopeton Livingston Watson, correct?

19 A Yes.

20 Q And did Ms. Michalec ever ask you any questions about  
21 Davino Watson's file?

22 A Not that I can recall.

23 Q Did Ms. Michalec ever raise any concerns regarding the  
24 correct Hopeton Watson had been identified as Davino Watson's  
25 father?

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1 A No.

2 Q Did Ms. Michalec ever question whether the right  
3 conclusions of derivative citizenship had been reached in your  
4 documents?

5 A No, not that I can recall.

6 Q So after, sir, Ms. Michalec signed off, you testified  
7 that you passed the file along to your supervisor, Mr. Ortiz,  
8 correct?

9 A Yes.

10 Q And along with the documents you drafted, you also  
11 provided Mr. Ortiz with the whole phase one packet that you  
12 received and you reviewed, correct?

13 A Yes.

14 Q And that included Davino Watson's A File?

15 A Yes.

16 Q And Hopeton Livingston Watson's A File?

17 A Yes.

18 Q And Mr. Ortiz never asked any questions about the Davino  
19 Watson file, did he?

20 A Not that I can recall.

21 Q And he never raised any concerns regarding whether you  
22 had identified the correct Hopeton Watson, did he?

23 A Not that I can recall.

24 Q And he never questioned whether you had reached the right  
25 conclusions of derivative citizenship in your documents, did

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1 he?

2 A Not that I can recall.

3 Q Sir, to your knowledge, Mr. Ortiz didn't do any  
4 independent investigation of the files pertaining to  
5 Mr. Watson that you provided him with, did he?

6 A Not that I know.

7 Q And he signed off on the charging documents as you had  
8 drafted them, correct?

9 A Yes.

10 Q And after that, you took the file up to Buffalo?

11 A Yes.

12 Q And deportation proceedings began, correct?

13 A Yes.

14 MR. BURNS: No further questions.

15 MR. CHO: Your Honor, could we ask for -- well, we'd  
16 like to ask for a short adjournment, if we could obtain  
17 Hopeton Livingston Watson's A File.

18 THE COURT: How long do you think that would take to  
19 obtain?

20 MR. CHO: We can place a call to agency counsel and  
21 see if we can get it immediately.

22 THE COURT: I think that might be useful.

23 MR. BURNS: Certainly, Your Honor. I'm not sure how  
24 long of an adjournment we're talking about.

25 MR. CHO: We'd like to do it before we conclude

1 Mr. Estrada's testimony, please.

2 THE COURT: I think that's reasonable. All right.  
3 Take a half-hour. Will that do it for you?

4 MR. CHO: Perhaps an hour.

5 THE COURT: Well, we'll have an early lunch hour.  
6 Have your lunch now and get back at 12:15, having fed  
7 yourself.

8 MR. BURNS: Your Honor, we would just request that  
9 if the government's attorneys are successful locating this A  
10 File that we have some opportunity to review it --

11 THE COURT: Give it to them as soon as you can, and  
12 I'll allow cross --

13 MR. BURNS: -- that we have time to review it, as  
14 well.

15 THE COURT: -- on this as a new issue.

16 MR. FLESSNER: Your Honor, may I just suggest we  
17 just move on with other witnesses and they can get the A File  
18 to us tonight. We can review it tonight and they can bring  
19 Mr. Estrada back tomorrow and we can do it that way.

20 THE COURT: If they can, that would be best.

21 MR. CHO: Your Honor, that's fine. We have another  
22 witness that's available.

23 THE COURT: Okay. We do that. All right.

24 So we'll have to bring you back to go over this  
25 issue, sir --

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1 THE WITNESS: Okay.

2 THE COURT: -- tomorrow. Okay?

3 MR. BURNS: Thank you, Officer.

4 THE COURT: So we'll have redirect now or do you  
5 want to put off --

6 MR. CHO: Could you give us five minutes or maybe  
7 just two minutes. We'll figure out which witness we'll call  
8 next.

9 THE COURT: What do you want to do about redirect?  
10 Do you want to put off all of your redirect?

11 MR. CHO: Yes.

12 THE COURT: Okay. That's fine. What time?  
13 Be here ten o'clock tomorrow, would you please?

14 THE WITNESS: Yes, sir.

15 THE COURT: Thank you.

16 MR. BURNS: Thank you, Your Honor.

17 THE WITNESS: I can go?

18 THE COURT: Yes, you can go.

19 All right. You want a ten-minute break? Is that  
20 it?

21 MR. CHO: Yes.

22 THE COURT: All right. Ten minute break.

23 (Recess.)

24 THE COURT: I will have to break at ten to one.

25 Tomorrow, we can begin at nine if you'd like, if the reporter

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1 is available, and we'll go again until ten to one and Friday,  
2 if necessary, we will go from nine until five.

3 MR. MARUTOLLO: Very well.

4 THE COURT: I'm sorry to break it up, but that's the  
5 nature of a bench trial.

6 MR. MARUTOLLO: Your Honor, to expedite matters, as  
7 well, we would seek admission of Defendant's Exhibits CC  
8 through YY, which would essentially be all the defendants  
9 exhibits because A through BB had already been admitted at the  
10 hearing. I don't believe there had been any objection.

11 THE COURT: CC through what?

12 MR. MARUTOLLO: CC through YY, Double Y.

13 THE COURT: Okay. No objection. They're all  
14 admitted.

15 So are all of your listed exhibits now admitted?

16 MR. MARUTOLLO: Yes, Your Honor.

17 THE COURT: From A to YY?

18 MR. MARUTOLLO: A to Double Y.

19 THE COURT: Okay. Fine.

20 MR. MARUTOLLO: Thank you, Your Honor.

21 THE COURT: Would you stand please?

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: You understand that you have to tell the  
24 truth or you'll be subject to criminal penalties?

25 THE WITNESS: Yes, I do.

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1 THE COURT: Give your name, please.

2 THE WITNESS: Scott Andrew Schrader.

3 THE COURT: I'm sorry?

4 THE WITNESS: Scott Andrew Schrader.

5 THE COURT: Spell the last name.

6 THE WITNESS: S-C-H-R-A-D-E-R.

7 THE COURT: Okay. Sit down.

8 DIRECT EXAMINATION

9 BY MR. MARUTOLLO:

10 Q Good morning, officer Schrader, where are you currently  
11 employed?

12 A Currently employed with the Department of Homeland  
13 Security, with Immigration and Customs Enforcement at the  
14 Buffalo Federal Detention facility in Batavia, New York.

15 Q What is your current title?

16 A I am supervisory detention and deportation officer.

17 Q And how long have you been employed by ICE or Legacy INS?

18 A I have been employed since October of 1997.

19 Q Have you received any legal training over the course of  
20 your career?

21 A Yes, I have received legal training through the academies  
22 that I went to as a detention enforcement officer and a  
23 deportation officer. I received legal training in regards to  
24 the INA and immigration procedures.

25 Q Now, Officer Schrader, what was your job title between



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1 the years 2009 to around May of 2011?

2 A I was a deportation officer.

3 Q And did you ever encounter an individual named Davino  
4 Watson?

5 A Yes, I did.

6 Q What role did you play with respect to Mr. Watson's  
7 detention?

8 A I was Mr. Watson's deportation officer at certain times  
9 during his case while he was at the Buffalo Federal Detention  
10 Facility.

11 Q And what time periods approximately were you assigned as  
12 Mr. Watson's deportation officer?

13 A I was assigned approximately from the end of February of  
14 2009 to sometime during 2011 when -- the case, sometimes we go  
15 back and forth from me to another -- to the docket, because I  
16 was an ICE Area Coordinator at the facility.

17 Q Was that after Mr. Watson was considered a final order?

18 A Yes. When his case came to me, he was already a final  
19 order.

20 Q So what is -- can you explain to the Court what is a  
21 final order?

22 A A final order is a case that has been gone before the  
23 immigration judge and gone through hearings, and it has been  
24 ordered removed by the immigration judge.

25 Q Now, so we're clear, did you play any role with respect

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1 to Mr. Watson's initial detention at ICE in May of 2008?

2 A No, I did not.

3 Q You've never worked with Officer Andren, Officer Estrada  
4 or Agent Ortiz, is that right?

5 A That's correct.

6 Q So we're clear, your role in the present case is limited  
7 to serving as Mr. Watson's deportation officer after the Board  
8 of Immigration Appeals issued its final order on February 5th,  
9 2009?

10 A That is correct.

11 Q Now, as Mr. Watson's deportation officer, what were your  
12 duties and responsibilities?

13 A My duties as Mr. Watson's deportation officer, he was a  
14 final order of removal when his case came to me. So my duty  
15 was to obtain a travel document from the Consulate General of  
16 Jamaica to facilitate his removal from the United States.

17 Q And what is a travel document?

18 A A travel document is basically almost like a passport,  
19 that the country that the individual is being removed to will  
20 issue, saying that they are permitting him to come back to  
21 that country.

22 Q And why were you seeking a travel document in this case?

23 A Mr. Watson had been ordered removed to Jamaica, and I was  
24 trying to get a travel document to facilitate his removal to  
25 Jamaica from the United States.

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1 Q So could Mr. Watson have left the Buffalo Detention  
2 Facility and returned to Jamaica?

3 A Yes.

4 Q If he wanted?

5 A Yes, there was a travel document that had been readily  
6 approved by the Consulate General of Jamaica. So when his  
7 litigation was finished, they would have chosen to -- he could  
8 have gone back to Jamaica at any time.

9 Q Could Mr. Watson have chosen to go back to Jamaica even  
10 before his litigation was finished?

11 A Yes, he could have. He could have notified the Consulate  
12 that he was withdrawing his litigation and that he was  
13 already -- wanted to go back to Jamaica.

14 Q Did you make any arrangements to have Mr. Watson  
15 interviewed by the Jamaican Consulate General to facilitate  
16 his return to Jamaica?

17 A I did. In early March of 2009, I made arrangements for  
18 him to be interviewed by the Consulate General of Jamaica. I  
19 believe he was interviewed on the 10th of March by the  
20 Consulate General.

21 Q Can you, Officer Schrader, can you turn your attention to  
22 Plaintiff's Exhibit 41? It's actually in this other binder.  
23 Sorry. Plaintiff's Exhibit 41, which I believe is in  
24 evidence.

25 A (Complies.)

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1 Q What is this document, Officer Schrader, in Plaintiff's  
2 Exhibit 41?

3 A This document is a form I-229(a). This is a warning for  
4 a failure to depart. This is a form that is issued to an  
5 individual who has become a final order of removal within 30  
6 days after becoming a final order of removal. And what it  
7 does is, it notifies them of their obligation to assist ICE  
8 with obtaining a travel document.

9 Q Was this completed part of the procedural process?

10 A Yes, it was.

11 Q And if you'd turn to still in the same exhibit on the  
12 bottom, it says US 898 to 899. What is on those pages?

13 A This is the list of obligations that the individual's  
14 notified that they have to help with assisting ICE to obtain a  
15 travel document. They are supposed to have a passport, a  
16 current one or expired one, they should submit that if it  
17 hasn't already been turned into ICE.

18 It also advises them that when they're interviewed  
19 by the consulate, they need to help by providing address and  
20 names of family members or individuals that could help to  
21 verify their identity.

22 Q Now, we discussed your duties with respect to obtaining a  
23 travel document. Did you have any duties with respect to  
24 Mr. Watson's Post Order Custody Review?

25 A Yes, I did. Mr. Watson -- the procedures of Immigration,

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1 once an individual's been in custody for 90 days after they've  
2 been a final order of removal, they have to have what's a  
3 called a Post Order Custody Review conducted for them.

4 Q And what is a Post Order Custody Review?

5 A It's a review of the case that goes through it and it  
6 will -- what it does is, it makes a determination whether the  
7 individual should remain in custody after the ninety day  
8 period.

9 Q And what is the order referred to in the Post Order  
10 Custody Review?

11 A The Order is the final -- when they became a final Order  
12 of Removal, in his case would have been with the BAI when they  
13 ordered him removed or dismissed his case.

14 Q So is a Post Order Custody Review another type of  
15 investigation into whether the plaintiff should be in custody?

16 A That is correct, yes.

17 Q Can you turn, Officer Schrader, to Exhibit GG? Again,  
18 this is Defendant's Exhibit GG in the evidence.

19 A (Complies.) Yes.

20 Q Turning your attention to Exhibit GG, what is this  
21 document?

22 A This is a Post Order Custody Review worksheet that would  
23 have been completed by the deportation officer.

24 Q And when is this document dated?

25 A The review date was dated 4-30 of 2009.

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1 Q And do you know who completed this Post Order Custody  
2 Review worksheet?

3 A Yes, it does. Deportation Officer Tracy.

4 Q Can you turn to US 879, which is in Exhibit GG?

5 A (Complies.)

6 Q Can you read, Officer Schrader, into the record the brief  
7 recommendation section that's in the middle of the page on  
8 page 879?

9 A Yes. "The subject is a 24 year old male native  
10 and citizen of Jamaica" --

11 Q If you can just slow down a little bit if you can for the  
12 court reporter.

13 A Okay.

14 Q Thank you.

15 A "The subject is a 24 year old male, native and citizen of  
16 Jamaica who last entered the United States as an immigrant  
17 class of 2284, 1998, at New York -- NYC, New York. On  
18 11-23-2004, convicted of attempted robbery in the second  
19 degree in Kings County Superior Court in New York, was  
20 resentenced on 2-22-2006 to eight months. On 8-27-2007,  
21 convicted of criminal sale of a controlled substance in New  
22 York County Superior Court, New York, and was sentenced to 42  
23 months. The subject was placed into removal proceedings on  
24 4-10-2008, for INA violation of Sections 237(a)(2)(A)iii, and  
25 237(a)(2)(B)i. The subject came into ICE custody on 5-8-2008

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1 from New York State Corrections. The subject was ordered  
2 removed by the IJ on 11-13-2008. The subject appeal to the  
3 BIA was dismissed on 2-5-2009. On 2-23-2009, the subject  
4 filed a PFR, was a stay in the Second Circuit. That PFR was  
5 stayed, is still spending. A present was sent on 2-20-2009.  
6 An ETD was done on 2-20-2009. The subject as provided a copy  
7 of his birth certificate. Based on the subject's criminal  
8 history, he poses a threat to the community and is a flight  
9 risk. Should he lose his PFR, a TD will be issued by the  
10 Jamaican Consulate to effect his removal to Jamaica. Based  
11 open all available information at this time, I recommend that  
12 Mr. Watson continue in ICE custody pending his removal from  
13 the United States."

14 Q So thank you, Officer.

15 What is the PFR?

16 A A PFR is a Petition for Review.

17 Q And you also mentioned that a present was sent. What is  
18 a present, on 2-20-09?

19 A A present is a package with a letter with information  
20 regarding an individual that is sent to the consulate  
21 requesting a travel document to facilitate their removal. The  
22 present would include copies of the immigration judge's  
23 order, or in this case, the BIA order would have been with  
24 that, dismissing his case. There would be a copy of the birth  
25 certificate on any other identification that we would have had

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1 in the file.

2 Q What does the ETD stand for?

3 A The ETD is an Electronic Travel Document System that ICE  
4 has, and this is a system that we have -- that we have to scan  
5 everything into the system as far as the present letter, any  
6 identification that would have gone into that.

7 There are -- a lot of the countries will issue a  
8 travel document out of the ETD system. It's something that  
9 goes back and forth with ICE to the computer system, but  
10 Jamaica does not do that. Jamaica issues a handwritten travel  
11 document they have on a certificate that they produce.

12 Q Okay. So Officer Schrader, this recommendation from the  
13 first Post Order Custody Review was that Mr. Watson should  
14 continue in ICE custody, correct?

15 A That is correct.

16 Q Can you turn your attention to Exhibit KK?

17 A (Complies.)

18 Q What is this document?

19 A This is another Post Order Custody Review worksheet.

20 Q And did you complete this second Post Order Custody  
21 Review?

22 A I did. I completed -- the review date was 5-19-2010.  
23 This is a Post Order Custody Review that was completed by  
24 myself.

25 Q And this is in the course of your duties as a deportation



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1 officer, right?

2 A That is correct.

3 Q Can you turn to US 1225 in that same exhibit?

4 A (Complies.)

5 Q Is there any indication on that exhibit that the  
6 plaintiff was subject to any discipline while in ICE custody?

7 A Yes.

8 Q What discipline was indicated there?

9 A On 12-29-2008, he was found guilty of a code violation of  
10 305, possession of anything not authorized for retention.  
11 Then on 11-17-2008, Code Violation 201, fighting, and 307,  
12 refusing an order.

13 Q So he had been disciplined for fighting?

14 A That is correct, sir.

15 Q Now, can you turn to US 1230? Again, it's in the same  
16 exhibit?

17 A (Complies.)

18 Q Now again, this is a another case analysis. I don't know  
19 want you to read the entire thing, but if you could read just  
20 the very last paragraph on US 1230 into the record?

21 A "Subject has convictions for attempted robbery, second  
22 degree, and attempted criminal sale of a controlled substance  
23 in the third degree. Subject would pose a serious risk to the  
24 safety and security of the community if he was to be released  
25 from ICE custody pending the resolution of his Second Circuit

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1 litigation and removal to Jamaica. ICE has been notified by  
2 the Consulate General of Jamaica in New York that a travel  
3 document to facilitate the subject's removal was readily  
4 available upon the resolution of his Second Circuit  
5 litigation. Therefore, continued detention is recommended  
6 while awaiting the resolution of the subject's Second Circuit  
7 litigation and removal from the United States to Jamaica."

8 Q So why did you believe that Mr. Watson posed a serious  
9 risk to the safety and security of the community if he were to  
10 be released?

11 A On the review, this one was based on whether the  
12 individual's a flight risk or a threat to the community. Due  
13 to the fact of his criminal history and his disciplinary  
14 instances while incarcerated -- while in ICE custody in  
15 Batavia, that would indicate that he had been a threat to the  
16 community.

17 Q And you completed this document, right?

18 A I did complete this document.

19 Q And what was your recommendation?

20 A My recommendation was that he continue in detention while  
21 awaiting the resolution of his Second Circuit litigation and  
22 removal from the United States to Jamaica.

23 Q Okay. Thank you.

24 Officer, can you turn to Exhibit JJ, which is in  
25 evidence?

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1 A (Complies.)

2 Q Officer Schrader, what is this document, Exhibit JJ?

3 A This is a Claim of United States citizenship memorandum.

4 Q And did you complete any part of this document?

5 A I did. I completed the statement of case and the facts  
6 portion of this memorandum.

7 Q Do you know why this document was created?

8 A The document was created. It's another layer of review  
9 that we would have. It was created at the request of the  
10 Office of Chief Counsel.

11 Q Did you submit your portion of this memoranda to the  
12 Office of Chief Counsel?

13 A I did. After completing the statement of the case and  
14 the facts, I submitted it to the Office of Chief Counsel.

15 Q When you submitted this document, was the section that is  
16 listed on DW 383, and -- through 385, that's under the title  
17 "Legal Analysis," was that section filed out when you  
18 submitted it to Chief Counsel?

19 A No, it was not. The legal analysis was done by the Chief  
20 Counsel after submitting this.

21 MR. FLESSNER: Your Honor, may I just ask that the  
22 government produce an unredacted copy of this exhibit?

23 MR. MARUTOLLO: Exhibit JJ?

24 THE COURT: Mine is not redacted.

25 MR. FLESSNER: If you look at 383, there's

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1 redactions on DW 00383.

2 THE COURT: All right. Try to do that, please.

3 MR. FLESSNER: They redacted the parents' names.

4 MR. MARUTOLLO: This is from the FOIL request,  
5 right?

6 MR. FLESSNER: Yes.

7 MR. MARUTOLLO: Okay.

8 BY MR. MARUTOLLO:

9 Q Officer Schrader, can you turn to Exhibit LL?

10 A (Complies.)

11 Q What is Exhibit LL?

12 A Exhibit LL is the Decision to Continue Detention letter.

13 Q Okay. And why was this completed?

14 A At the end of his Post Order Custody Review, there's a  
15 letter that is completed that is given to the subject to let  
16 them know the result of the review.

17 Q When was this letter served on the subject, Mr. Watson?

18 A The service, I believe it's 5-30 of 2010.

19 Q And what was the purpose of this document, Government's  
20 Exhibit LL?

21 A The purpose of the document is to let the subject know  
22 that a review has been conducted and that he is going to stay  
23 in custody. That's what the recommendation was.

24 MR. MARUTOLLO: No further questions, Your Honor.

25 THE COURT: Thank you.

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1 CROSS-EXAMINATION

2 BY MR. FLESSNER:

3 Q Good morning, Officer Schrader.

4 A Good morning.

5 Q Isn't it true that you did nothing to investigation  
6 Mr. Watson's citizenship until May of 2010, more than two  
7 years after his detention?

8 A Mr. Watson's case came to me after it was a final Order  
9 of Removal. So his case had already been addressed, that he  
10 had made a USC claim in court that was adjudicated by -- his  
11 N-600 application was adjudicated by USCIS.

12 Q Is that a yes or no?

13 A (No response.)

14 Q Isn't it true that you did nothing to investigate  
15 Mr. Watson's claim of citizenship until May of 2010, more than  
16 two years after his detention.

17 A As far as USC memoranda, I completed one in 2010.

18 Q So the answer is yes?

19 A There was already -- his case had already been addressed  
20 regarding the USC claim by USCIS. So when he came to me, he  
21 was already a Final Order of Removal.

22 Q Is the answer yes?

23 A (No response.)

24 Q You did nothing to investigate his claim of citizenship  
25 until May of 2010?

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1 MR. MARUTOLLO: Objection; asked and answered.

2 THE COURT: He has never answered it.

3 A Yes. USC memorandum was completed in 2010.

4 BY MR. FLESSNER:

5 Q Isn't it also true that Watson's claim of United States  
6 citizenship should have been inputted in the case action and  
7 decision, but it was not. Isn't that true?

8 A In the case action and decision?

9 Q Yes.

10 A No. They're usually -- sometimes it would be in the case  
11 comments, but that is not always done.

12 Q So it wasn't put in the case comments, either?

13 A It's not in the case comments.

14 Q And it should have been in there?

15 A Officers do things differently, each one.

16 Q You would have put it in there?

17 A Most likely, yes.

18 Q And isn't it -- look -- do you have Plaintiff 55, 56, 57,  
19 58 in front of you?

20 A (Perusing documents.)

21 Q Those are what -- have you found them yet? I'm sorry.

22 A No.

23 Q Is that the plaintiff or defendant you're looking at?

24 A This is plaintiff.

25 Q Okay. Good.

1 A Fifty-five, you said?

2 Q Fifty-five, six, seven and eight.

3 A (Perusing documents.)

4 Q Those are what are commonly referred to as the United  
5 States Citizen Directives, is that right?

6 A That's correct. That's correct.

7 Q All right. Isn't it true that you've never been trained  
8 on the USC directives?

9 A I don't know. Actually, I have seen these directives  
10 before, and I have probably had some form of training through  
11 Virtual University or something like that.

12 Q Okay. Look at your -- look at what is not in evidence,  
13 but is in the transcript of your deposition. It's PX 95 back  
14 there, and turn to page 26.

15 A (Complies.)

16 MR. FLESSNER: Wait a minute. This is the wrong  
17 one. I think this is on your deposition. (Confers with  
18 Ms. Stephens.) Okay.

19 BY MR. FLESSNER:

20 Q Okay. I'm sorry. Look at 96, not 95. I forget that you  
21 had two depositions?

22 A Ninety-six?

23 Q Yeah. Turn to page 26?

24 MR. MARUTOLLO: Counsel, what deposition is this in?

25 MR. FLESSNER: This is PX 96.

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1 MR. MARUTOLLO: No --

2 MR. FLESSNER: Date of 9-15.

3 MR. MARUTOLLO: Okay.

4 THE COURT: Page what again, please?

5 MR. FLESSNER: Twenty-six, 26.

6 THE COURT: Thank you.

7 BY MR. FLESSNER:

8 Q All right. And would is a deposition that was taken of  
9 you by me on --

10 MR. MARUTOLLO: Objection, Your Honor. This is  
11 improper impeachment. He just gave essentially the same  
12 answer under oath a minute ago and the answer here is the  
13 same.

14 THE WITNESS: You may continue.

15 BY MR. FLESSNER:

16 Q All right. Looking at lines nine through 11, I asked --  
17 by the way, this is the deposition of you taken earlier this  
18 month, correct?

19 A Correct.

20 Q And you were under oath during that deposition, correct?

21 A I was, correct.

22 Q Right. And I took the deposition of you, correct?

23 A That is correct.

24 Q And looking at lines nine through 11, this is a question  
25 I gave you and that's the answer you gave, correct?



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1 "All right. Did you receive training when those  
2 claims for those directives came out?"

3 "I don't recall receiving training. We might have  
4 received something in Virtual University -- we might have  
5 received something in Virtual University, but there is a  
6 memorandum that was -- it was sent out and, you know, anything  
7 regarding this. I know there's been memos sent out regarding  
8 USC claims and we have to follow those memos."

9 So isn't it true that you did not, in fact, receive  
10 training?

11 MR. MARUTOLLO: Objection.

12 A I said I might have received training at Virtual  
13 University.

14 BY MR. FLESSNER:

15 Q All right. Isn't it true that there's nothing in the  
16 case comments or case action decision in Mr. Watson's file  
17 that indicate that the protocol in May of 2008 directive  
18 regarding USC was followed?

19 A (No response.)

20 Q There's nothing to indicate that the May 2008 USC  
21 directive was followed in Mr. Watson's case, isn't that right?

22 A That is correct. There is nothing in the case comments.

23 Q And had the protocol been followed, it would been input  
24 into the case comments, isn't that right?

25 A I can't speak for every officer, but most likely yes.

1 Q Had you followed it, you would have inputted it, correct?

2 A I most likely, yes, would have input it into the case  
3 comments.

4 Q And it is also true that there nothing in the case  
5 comments to show that the July 2008 United States citizen  
6 directive was followed as well, isn't that right?

7 A That is correct.

8 Q In fact, there's nothing in any of the case comments to  
9 show that any of the directives were followed, isn't that  
10 right?

11 A Well, there's case comments in there that say that his  
12 case was -- his N-600 was given to him in court and that was  
13 adjudicated by USCIS. That's part of when someone makes a  
14 claim of United States citizenship, that is the part of the  
15 procedure that has to be done. The N-600 needs to be given to  
16 the individual and that has to be adjudicated by the United  
17 States Citizenship and Immigration Services.

18 Q Okay. But my question was -- I understand that you've  
19 given an N-600 in court. My question was, there's nothing in  
20 case comments to show that the directives had been followed,  
21 isn't that right?

22 A That is correct.

23 Q And the requirements -- turn to 58, please.

24 A Page 58?

25 Q No, I'm sorry. Plaintiff's Exhibit 58. That's the

1 November 19, 2008 or 2009 directive.

2 A (Complies.)

3 Q And turn to DW 000576, and look under the paragraph  
4 "Claims by Detained Individuals." And under this directive,  
5 it says that, if an individual, a detained individual claims  
6 he is a United States citizen then an officer must, A,  
7 immediately examine the merit of the claim, correct?

8 A That's correct.

9 Q He must notify and consult with the Office of Chief  
10 Counsel, correct?

11 A That's correct.

12 Q He must provide detainee with a list of pro bono  
13 attorneys, even if one has already been provided, correct?

14 A Correct.

15 Q And he must play a role in preparing and submitting to  
16 headquarters by email a United States Citizenship Claim within  
17 24 hours, isn't that right?

18 A That is correct.

19 Q And that did not happen in this case?

20 A (No response.)

21 Q Is that correct?

22 A He did have his N-600 application. He made a claim to  
23 United States citizenship while he was in court, and the N-600  
24 application given to him.

25 When this case came to me as a Final Order of

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1 Removal, his USC claim had already been addressed by United  
2 States Citizenship and Immigration Services. It was  
3 already -- the immigration judge proceeded and ordered him  
4 removed from the United States.

5 The BIA -- and he made an appeal to the BIA. The  
6 BIA dismissed the case. He also went to the Administrative  
7 Appeals Office. They also dismissed that. So when his case  
8 came to me, already his claim of United States citizenship  
9 that he made in court had already been addressed. He was  
10 already a Final Order.

11 Q Does it say in the directive that you can excused from  
12 following the directive if someone else has made another  
13 investigation?

14 A No, it does not.

15 Q And these steps were not followed?

16 A Correct.

17 Q Also, regarding the case comments, there is nothing in  
18 Mr. Watson's case comments to show that the November 2009  
19 directive was followed, either, was it?

20 A No, there's not.

21 Q So it is true that you did nothing to investigate  
22 Mr. Watson's claim of being a United States citizen, isn't  
23 that right?

24 A When his case to me, he was already a Final Order of  
25 Removal, and everything indicated that his United States claim

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1 to USC had been addressed. His N-600 application was already  
2 adjudicated and denied by USCIS. He was ordered removed by  
3 the immigration judge.

4 The immigration judge, if he had any doubt as to  
5 whether he thought that a USC claim had been made, he would  
6 not have proceeded with ordering him removed from the United  
7 States. Also, he appealed to the Board of Immigration  
8 Appeals. They dismissed the case. He also appealed to the  
9 Administrative Appeals Office, and they also dismissed that.

10 Q So the answer to my question about what you did,  
11 Mister -- Officer Schrader, is you did nothing to  
12 investigate -- you, yourself, did nothing to investigate his  
13 claim of citizenship?

14 A I personally did not at that time, no.

15 Q Okay. Thank you. There's also nothing in the case  
16 comments to indicate there was a memo sent to headquarters or  
17 the Field Office Director or to the Office of Chief Counsel,  
18 isn't that right?

19 A In the case comments?

20 Q Yes.

21 A There's a comment in there that says a USC memo was  
22 completed in 2010 and forwarded to the Office of Chief  
23 Counsel.

24 Q Okay. That was two years after he was detained?

25 A That is correct.

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1 Q Isn't it true that between the time USCIS denied  
2 Mr. Watson's N-600 and then when they granted it, there  
3 were -- no new facts were added to its file? The facts  
4 remained essentially the same?

5 A That is correct.

6 Q Look at PX 64 and PX 65 for me, please.

7 A (Complies.)

8 Q What is PX 64?

9 A PX 64 is a USC memorandum.

10 Q All right. And look at PX 60, which is another  
11 memorandum.

12 A (Complies.)

13 Q PX 64 says that he's not a citizen and PX 60 says he is,  
14 is that right?

15 A PX 64 says that the conclusion was that he had not a  
16 proper claim to U.S. citizenship.

17 Q And PX 60 say -- that's the November 2nd memo that says  
18 he is a U. S. Citizen, looking at the conclusion?

19 MR. MARUTOLLO: Objection. It doesn't state that in  
20 the conclusion.

21 THE COURT: Well, where is it?

22 BY MR. FLESSNER:

23 Q Look at the conclusion, Mr. Schrader, on DW 000376.

24 A (Complies.) Yes?

25 Q Okay. Now, I want you to look at PX 65.

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1 A (Complies.)

2 Q PX 65 is an email to the OPLA regarding the USC claims of  
3 Mr. Watson, dated November 2nd of 2011, correct?

4 A That's correct.

5 Q That shows that the memo went up to the Office Field  
6 Director, to the Legal Counsel and to all the right people in  
7 the chain of command?

8 A (Perusing document.) I see where it went to Office of  
9 Chief Counsel.

10 Q Have you ever seen anything to demonstrate that the May  
11 2010 memo went up the chain of command? Is there any written  
12 document as far as you're aware that shows that?

13 A Well, when that memo was forwarded over to Office of  
14 Chief Counsel, there wasn't a legal analysis that was done on  
15 it at that time. It was just the facts and the statement of  
16 the case. If you look at the memorandum, it shows that the  
17 legal analysis was done by the Office of Chief Counsel, so  
18 that would have been forwarded up.

19 THE COURT: On 60, would you unredact that, please,  
20 when you get a chance?

21 (Continued on the next page.)

22

23

24

25

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1 Q Look at the 60 again, please.

2 A Exhibit 60?

3 Q Yes.

4 A Okay.

5 Q It's signed, is it not?

6 A That is correct, it is signed.

7 Q And look at 64. It's not signed, isn't that correct?

8 A That is correct.

9 Q The BIA terminated Mr. Watson's removal proceedings  
10 approximately 14 months after it was determined that he was a  
11 United States citizen; isn't that right?

12 A That is correct.

13 Q And on November 2nd of 2011, the date that he was  
14 released, that's when the government determined that Mr.  
15 Watson is a U.S. citizen; isn't that correct?

16 A They determined that he made a probable claim to United  
17 States citizenship. They decided that it was beneficial to  
18 release him at that point in time.

19 Q Look at your exhibit -- look at your deposition at page  
20 47, please.

21 THE COURT: Would you unredact all of these  
22 documents. Sixty-five is heavily redacted. We will  
23 substitute the full document throughout the case.

24 MR. FLESSNER: That would be helpful for us, too.

25 MR. MARUTOLLO: Your Honor, we would only note,



1    though, that we can certainly unredact the names and those  
2    issues, but we produced privilege logs for any attorney-client  
3    communication for other redactions throughout the case. So we  
4    will certainly unredact the names, but --

5           THE COURT: Well, try to get together. If there's  
6    any dispute, you'll have to come to me. But I assume --

7           MR. MARUTOLLO: We did have issues, Your Honor, and  
8    we have already met and conferred about these issues  
9    throughout the course of the litigation on a variety of issues  
10   and with Judge Pohorelsky as well, and we produced our  
11   privilege logs.

12           And I believe we have produced unredacted, updated  
13   unredacted documents with the names unredacted of the  
14   attorneys. But we still stand by our objection with respect  
15   to --

16           THE COURT: Well, I'm overruling your objection and  
17   I just want an unredacted file. If you have any questions you  
18   can't get together on, take it up with the magistrate judge.

19           MR. FLESSNER: Your Honor, to be clear, the  
20   government didn't produce any of these documents. We got all  
21   these documents that are redacted through the FOIA request.  
22   The U.S. Attorney's Office refused to produce all of these  
23   documents.

24           MR. MARUTOLLO: That's totally inaccurate, Your  
25   Honor.

1 THE COURT: I don't really care about that. Thank  
2 you.

3 A I'm sorry, what document did you want me to look at,  
4 again?

5 Q We got sidetracked. Looking at 96, it's your deposition,  
6 and I want you to turn to page 47 and look at lines --  
7 starting at line 16. Looking at your answer on line 13, "it  
8 appears that" -- this is what you said after my question to  
9 you about what happened on November 2nd, 2011.

10 "It appears that -- it appears that he was  
11 granted -- there was a probative claim made of United States  
12 citizenship and appears they were saying he was a citizen at  
13 that point in time."

14 Isn't that what you said?

15 A That is correct.

16 Q Look at Defendant's Exhibit GG, would you please. That's  
17 a document that Mr. Marutollo showed you earlier in your  
18 testimony. And specifically look at U.S. 000878, and at the  
19 very top you see an address and a telephone number. Do you  
20 see those?

21 A Yes, I do.

22 Q Read for the Court the telephone number that you have  
23 there.

24 A 718-377-7027.

25 Q Do you know whose telephone number that is?

1 A No, I do not know.

2 Q Did you ever call that number or make an inquiry about  
3 that number?

4 A No, I did not.

5 Q Look at KK as well, and turn to 1227 of KK. Do you see  
6 an address and telephone number at the top of that document?

7 A I do.

8 Q Read the telephone number.

9 A 718-377-7027.

10 Q Did you ever call that number?

11 A No. I did not have a need to call that number.

12 Q Do you have any idea whose number that is?

13 A No, I do not.

14 Q What does it say about Davino Watson's educational level,  
15 if you go three-quarters of the way down the page?

16 A It says 11th grade.

17 MR. FLESSNER: No further questions.

18 MR. MARUTOLLO: No further questions, Your Honor.

19 THE COURT: Thank you very much, sir.

20 MR. MARUTOLLO: Your Honor, our next witness is

21 here. He's from Buffalo. But just so we're clear, I believe  
22 Your Honor said we have to break at 10 to 1. He's unavailable  
23 to be here tomorrow. He needs to be back in Buffalo. I'll  
24 try -- if possible, can we -- I'm not sure if Your Honor would  
25 like to break for the day so we don't have to interrupt the

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1 testimony, because I don't know if he'll be available to  
2 testify via phone or what time he will be available via phone  
3 tomorrow.

4 THE COURT: What's the application?

5 MR. MARUTOLLO: I think -- unless we can agree to  
6 have his testimony completed today, we would ask that we have  
7 an adjournment so he can testify via phone either at some  
8 point tomorrow or some point Friday.

9 THE COURT: You want to break now, is that it?

10 MR. MARUTOLLO: Yes, Your Honor.

11 MR. FLESSNER: Why don't we just put him on, then if  
12 we have to cross him on the phone we can do that.

13 THE COURT: Okay.

14 MR. FLESSNER: I mean, what --

15 MR. MARUTOLLO: It's just not clear when he'll be  
16 available via phone.

17 THE COURT: We'll work that out. Bring him in.  
18 You're released. Thank you.

19 THE WITNESS: Thank you, Your Honor.

20 MR. MARUTOLLO: Just to be clear, the government is  
21 calling Michael Phillips, who's the Field Office Director from  
22 Buffalo Field Office of ICE.

23 (Witness sworn.)

24 COURTROOM DEPUTY: Please have a seat. State your  
25 name and spell your last name for the record.

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1 THE WITNESS: My name is Michael Phillips. My last  
2 name is spelled P-h-i-l-l-i-p-s.

3 MICHAEL PHILLIPS,

4 Called by the Defendant, having been first duly sworn, was  
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MARUTOLLO:

8 Q Good afternoon, Mr. Phillips. Where are you currently  
9 employed?

10 A With Immigration and Customs Enforcement in the Buffalo  
11 Field Office, Enforcement and Removal Operations.

12 Q And what is your current title?

13 A I am the Field Office Director.

14 Q How long have you been in that role?

15 A Since July of 2008.

16 Q What were your job -- I'm sorry, how long have you been  
17 employed by ICE or legacy INS?

18 A Since May of 1987.

19 Q Can you provide a brief description of the jobs that you  
20 had over the course of your career from 1987 through 2008?

21 A Sure. In May of 1987, I was hired as an immigration  
22 inspector with legacy INS at the Peace Bridge in Buffalo. And  
23 in October of 1991, I was selected to be a supervisory  
24 Detention Enforcement Officer with the deportation program  
25 under legacy INS.

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1 In 1996, I was promoted to supervisory Detention and  
2 Deportation Officer. In 2006, I was promoted to assistant  
3 Field Office Director; and in July of 2008, I was promoted to  
4 Field Office Director.

5 Q And what are your general duties and responsibilities as  
6 Field Office Director?

7 A As Field Office Director, I manage all the personnel. I  
8 manage the operations. Our mission is to identify, arrest and  
9 remove those subjects that are in the United States that pose  
10 a threat to public safety and national security as well as  
11 those who enter the country illegally or otherwise defy our  
12 nation's immigration laws.

13 Q What was your role with respect to Mr. Watson's case that  
14 we're here for today?

15 A I was the Field Office Director while he was in our  
16 custody.

17 Q Did you have any personal interaction with Mr. Watson?

18 A I did not.

19 Q Did you have any role with respect to the initial  
20 detention of Mr. Watson by Officer Estrada or Agent Ortiz or  
21 Officer Andren?

22 A I did not.

23 Q So was your role limited to the Buffalo field -- the  
24 Buffalo Federal Detention Facility?

25 A That is correct.

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1 Q So as the Buffalo Field Office Director, do you have the  
2 ability to release detainees from custody?

3 A I do, yes.

4 Q When can you release detainees from custody?

5 A When they're no longer subject to mandatory detention or  
6 there's probative evidence that they should no longer be  
7 detained.

8 Q And do you need to consult with any attorneys before  
9 making this release of the detainees from custody?

10 A Oftentimes I do to get a legal opinion from them, but the  
11 decision is mine.

12 Q So why did you release Mr. Watson from ICE custody on  
13 November 2nd, 2011?

14 A In December of 2011 --

15 Q I'm sorry. You can continue, but I said -- so I'm clear,  
16 I said for the record, so why did you release Mr. Watson from  
17 ICE custody on November 2nd, 2011? But please continue.

18 A I was advised by Chief Counsel's Office that there was a  
19 change in the legal interpretation regarding his claim to U.S.  
20 citizenship, and so we released him from custody.

21 Q What's your understanding of that change in legal  
22 interpretation?

23 A My understanding of the change, originally, the first  
24 legal interpretation was that Mr. Watson did not derive  
25 citizenship because he did not meet the definition of child;

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1 and it's my understanding that the changed legal  
2 interpretation was that he did derive citizenship.

3 Q Did any facts change that forced you to release the  
4 plaintiff?

5 A No. The facts stayed the same.

6 Q So what was the key that made you release the plaintiff?

7 A As I said before, in consultation with Chief Counsel's  
8 Office, due to the change in legal interpretation that  
9 indicated that he may derive citizenship, with that probative  
10 evidence, we released him from custody.

11 Q Now, on November 2nd, 2011, when your facility released  
12 the plaintiff, was he a U.S. citizen?

13 A He was -- at that time?

14 Q At that time.

15 A To my knowledge, he was not a citizen.

16 Q And why not?

17 A His case was still pending. He was still in proceedings.  
18 I believe his appeal was pending with the Second Circuit, and  
19 the Second Circuit remanded the case to the Board of  
20 Immigration Appeals. So we were awaiting the Board of  
21 Immigration Appeals to make a ruling on the case.

22 Q Now, Mr. Phillips, what's your understanding of the  
23 purpose of the four internal ICE memoranda that are on  
24 Exhibits Plaintiff's 55 through 58, the directives, what's  
25 your understanding of the purpose of these memoranda?



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1 A The purpose of those memos is to ensure that when  
2 Enforcement and Removal Operation officers encounter a subject  
3 claiming to be a U.S. citizen that those claims are thoroughly  
4 investigated.

5 Q Are these internal ICE memoranda the same as government  
6 regulations?

7 A No. They're internal guidance.

8 Q Did these internal ICE memoranda apply to Mr. Watson's  
9 case?

10 A Yes.

11 Q Do you believe that they applied to Mr. Watson's case,  
12 these memoranda?

13 MR. FLESSNER: Objection. He just answered that  
14 question.

15 THE COURT: I'll allow it.

16 A Well, no. I mean, they don't apply because --

17 THE COURT: Excuse me.

18 MR. FLESSNER: Sorry.

19 A -- his claim to citizenship was not made to an ERO  
20 officer. Those memos, as I've stated before, are when our  
21 officers encounter a subject claiming to be a citizen.

22 His claim to citizenship was not made to our  
23 officers. His claim to citizenship was made before the  
24 immigration judge in the court in the presence of our ICE  
25 counsel.

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1 Q So I'm sorry, just to be clear for the record, did you  
2 believe that these internal memoranda applied to Mr. Watson's  
3 case?

4 A No.

5 Q But if, even if -- and let me back up. What's the  
6 principle behind these internal memoranda, these directives?

7 A To ensure that those claims are thoroughly and completely  
8 investigated.

9 Q Now, even if these directives, these memoranda applied to  
10 Mr. Watson's case, what steps, if any, were taken to make sure  
11 that the principle behind these directives was met?

12 A Well, I believe it was June 25th when he appeared, his  
13 first appearance before the immigration judge when he made  
14 that claim to U.S. citizenship. And I think that triggered an  
15 immediate reaction. He was furnished with an N-600  
16 application for certificate of citizenship and told to submit  
17 that to Citizenship and Immigration Services. Citizenship and  
18 Immigration Services is the division of Homeland Security that  
19 adjudicates claims to citizenship. They're our experts.

20 So the application was submitted to CIS. CIS  
21 reviewed it. They adjudicated it. They denied the  
22 application, made a determination that he did not derive  
23 citizenship.

24 The subject appealed the CIS decision to the  
25 Administrative Appeals Office. The Administrative Appeals

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1 Office agreed with CIS, determined that he did not derive  
2 citizenship.

3 He then was ordered removed from the United States  
4 by the immigration judge. He as well determined that the  
5 subject did not derive citizenship.

6 The subject then appealed the immigration judge's  
7 decision to the Board of Immigration Appeals. The Board of  
8 Immigration Appeals dismissed the appeal, agreed with the  
9 immigration judge, determined that he did not derive  
10 citizenship.

11 The subject then filed an appeal, a petition for  
12 review with the Second Circuit Court of Appeals. And the  
13 Second Circuit Court of Appeals eventually remanded the case  
14 back to the Board of Immigration Appeals to decide on the  
15 case.

16 So I think the case was thoroughly investigated. A  
17 lot of eyes were looking at the case. While he was in our  
18 custody during this process, we conducted two custody reviews.  
19 Those custody reviews are an opportunity to review the case  
20 and decide whether or not he should continue to be detained or  
21 not. So....

22 Q And were consultations also made with the Office of Chief  
23 Counsel, from ICE to the Office of Chief Counsel?

24 A Yes. I'm always in contact with Chief Counsel's Office.  
25 They're right down the hall. We speak daily.

1 Q So do you believe that the purpose of these ICE  
2 directives was met with respect to plaintiff's claims to  
3 citizenship?

4 MR. FLESSNER: Objection. His belief is irrelevant.

5 THE COURT: I'll allow it.

6 THE WITNESS: Answer the question?

7 THE COURT: Yes, you may answer.

8 A Yes. You know, with all that, I believe that the case  
9 was thoroughly investigated.

10 MR. MARUTOLLO: I have no further questions, Your  
11 Honor.

12 CROSS-EXAMINATION

13 BY MR. FLESSNER:

14 Q Mr. Phillips, will you look at PX-31 in front of you.  
15 Are you looking at PX-31?

16 A I don't know what I'm looking at here.

17 Q That's not it. Try 31 there. What is that document?

18 A This is a certificate of citizenship for Davino Hopeton  
19 Watson.

20 Q And looking down, what date does it say Mr. Davino  
21 Hopeton Watson became a United States citizen?

22 A September 17th, 2002.

23 Q So when you just testified that you didn't think he was a  
24 citizen and you still don't think he was a citizen on November  
25 2nd of 2011, you would agree with the United States

1 Government?

2 MR. MARUTOLLO: Objection. That misstates his prior  
3 testimony.

4 THE COURT: Sustained. Argumentative.

5 Q Was Mr. Watson a citizen on November 2nd, 2011?

6 A According to this, yes. We now know that he was.

7 Q Right. The mission of the Enforcement and Removal  
8 Operation is to identify, locate and arrest aliens in the  
9 United States; isn't that right?

10 A That is correct.

11 Q Those who pose public -- a threat to public safety,  
12 national security, and who enter the country illegally; isn't  
13 that correct?

14 A That is correct.

15 Q And ERO, by the way, is the same entity as its  
16 predecessor DRO, Detention and Removal Operations; isn't that  
17 right?

18 A Yes.

19 Q And it's not the mission of ERO to arrest United States  
20 citizens, is it?

21 A No. We enforce the immigration laws.

22 Q You're the highest ranking official in upstate New York,  
23 DHS official in upstate New York; isn't that right?

24 A For Enforcement and Removal Operations, yes.

25 Q And you're in charge of the Batavia Federal Detention

1 Facility; correct?

2 A Yes.

3 Q And you're familiar with the United States directive --  
4 United States citizen directives that Mr. Marutollo was  
5 discussing earlier today; correct?

6 A Yes.

7 Q And the purpose of those directives is to establish a  
8 protocol, is it not, to assist ERO officers and field office  
9 directors like you when they encounter someone who claims to  
10 be a United States citizen; isn't that right?

11 A It's to provide guidance to ERO officers who encounter  
12 subjects that claim to be U.S. citizens.

13 Q And isn't it true that it's unlawful for your officers to  
14 arrest and detain a United States citizen for civil  
15 immigration enforcement even before the U.S. directives were  
16 issued?

17 A ICE officers cannot knowingly arrest -- they don't have  
18 the authority to knowingly arrest U.S. citizens.

19 Q And under the USC directives, it's your responsibility,  
20 is it not, to ensure that the officers under your command  
21 understood and adhered to these directives; isn't that right?

22 A That is correct.

23 Q And you have no idea, you personally have no idea whether  
24 these -- whether your officers comply with these directives,  
25 do you?

1 A No, I -- I know that they comply. There's several ways  
2 that, you know, we ensure compliance. I think just our  
3 supervisory process ensures compliance with memos, guidance,  
4 directives that come down. You know, supervisors do spot  
5 checks. They do progress reviews. They make rounds at the  
6 facility. They speak to detainees. They do final ratings at  
7 the end of the year.

8 So yeah, there's several layers of supervision and,  
9 you know, we hold our employees accountable. So I would say  
10 that yes, there are mechanisms in place to ensure compliance.

11 Q Okay. Look at Exhibit 100 in front of you there, please.  
12 It's not in evidence, but it's your transcript of your  
13 deposition.

14 A I have it.

15 Q Turn to page 13, please.

16 A I'm there.

17 Q Looking at lines -- this is a transcript of your  
18 deposition that was taken by me, correct, earlier in the  
19 month?

20 A Yes.

21 Q And you were sworn to tell the truth like you are today  
22 during that deposition; isn't that right?

23 A Correct.

24 Q Look at lines 6 to 10, and this is the question I asked  
25 you and this is the answer that you gave me; isn't this

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1 correct?

2 "How was compliance ensured?

3 Well, I guess -- I don't know how we ensure  
4 compliance.

5 Is it expected that the officers comply with the  
6 directives?

7 I don't know how else to answer that."

8 So the answer to my question is, you don't know how  
9 compliance is ensured in this case; isn't that right?

10 A I just explained how we ensure compliance.

11 Q And when I asked before, you didn't know the answer to  
12 that question?

13 A I had a chance to look at my deposition and --

14 Q And to change your answer?

15 MR. MARUTOLLO: Objection, Your Honor.

16 THE COURT: Excuse me. Don't interrupt. Go ahead.

17 A I think I could have expanded on my answer a little bit  
18 better.

19 Q Okay.

20 A As the Field Office Director, to say I don't know, I have  
21 no way of ensuring compliance of my employees, that's not an  
22 accurate statement.

23 Q But it was your statement.

24 A Right.

25 Q You personally have no formalized training in the



1 directives; isn't that right?

2 A Formalized training in memos?

3 Q In USC directives.

4 A USC --

5 Q United States citizen directives.

6 A Okay. The memos, the internal guidance that we receive  
7 regarding citizenship, there were no classes. It was pretty  
8 clear what the guidance was. And I don't believe that  
9 headquarters felt that any additional training was necessary.  
10 There was none provided.

11 Q All right. So the answer to my question is correct,  
12 there was no formalized training?

13 A Correct.

14 Q Okay. By the way, you referred to them on direct  
15 examination as internal memos, but, in fact, they're on the  
16 DHS website, are they not?

17 A They are on the DHS, the Internet.

18 Q Right, and they're available to the public. I could go on  
19 the web right now and download those directives, couldn't I?

20 A If you say you can.

21 Q Isn't it also true that there's no one that monitors to  
22 ensure the directives are followed?

23 A I think I just said that's the job of the supervisors,  
24 first, second, third line levels of supervision where we all  
25 hold people accountable.

1 Q All right. Turn to page 14 of your deposition, please,  
2 and look at lines -- look at the bottom of 13, and these are  
3 the questions I asked you and these are the answers you gave  
4 me.

5 But the question then is: "Do you or someone in  
6 your staff do any monitoring to ensure that these directives  
7 are, indeed, followed?"

8 And the answer is: "No. It is assumed that the  
9 officers are professional, that they are law enforcement  
10 officers, and when they are given directives they will adhere  
11 to that."

12 Isn't that the answer you gave to my question?

13 A I did.

14 Q So, in fact, no one monitors them?

15 A I would disagree with that. People do monitor --

16 Q So you're disagreeing with your testimony?

17 THE COURT: Let him finish. Did you finish your  
18 answer?

19 A I would just say that, you know, supervisors, I mean,  
20 it's our jobs, all of our jobs to ensure that we comply with  
21 memos and guidance that come from headquarters. I don't want  
22 to say that we don't do that.

23 Q My question then is, Mr. Phillips, you testified earlier  
24 that no one monitored and now you're changing that testimony;  
25 isn't that right?

1 A Yes, I'm expanding on that answer.

2 Q Isn't it true that if a deportation officer pulled the  
3 wrong A-file for the father of Mr. Watson that he made a  
4 mistake and he didn't do his job properly; isn't that correct?

5 MR. MARUTOLLO: Objection.

6 THE COURT: I'll allow it.

7 A Can you repeat the question, please?

8 Q Sure. Isn't it true that if the deportation officer  
9 investigating Mr. Watson's status pulled the wrong A-file for  
10 Mr. Watson's father that he made a mistake and he didn't do  
11 his job properly?

12 A It's hard for me to sit here and say he made a mistake.  
13 I don't know what information Mr. Watson provided to the  
14 officer for the officer to continue his investigation.

15 Q Are you testifying to the judge that it's okay for an  
16 officer to pull the wrong A-file of a parent?

17 THE COURT: Don't answer that. That's not a fair  
18 question.

19 Q Is it a mistake if the officer pulls the wrong A-file?

20 THE COURT: It may be or it may not be. Don't  
21 answer.

22 Q Did your officers obtain judicial approval for the arrest  
23 warrant of Mr. Watson?

24 A Judicial approval?

25 Q Yes.

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1 A No.

2 Q Have you ever heard the case Gerstein versus Pugh? It's  
3 a United States Supreme Court case. Are you familiar with  
4 that?

5 A No, sir.

6 Q Do you know whether or not the Fourth Amendment under the  
7 Supreme Court ruling requires that there be a prompt judicial  
8 determination under the Fourth Amendment to detain an  
9 individual?

10 MR. MARUTOLLO: Objection, Your Honor.

11 THE COURT: Sustained.

12 Q Isn't it true that your officers did not bring Mr. Watson  
13 before an immigration judge to get a probable cause  
14 determination of his detention?

15 A The first time he appeared before an immigration judge  
16 was for his initial appearance for the removal proceedings.

17 Q And that was approximately five weeks after his  
18 detention?

19 A June -- yes, sir.

20 Q Isn't it also true that the officers placed Mr. Watson in  
21 mandatory detention, such that the immigration judge could not  
22 even review their custody decision?

23 A The immigration judge can still review the custody  
24 determination.

25 Q Look at 33, please. That's a notice of custody

1 determination for Mr. Watson?

2 A Yes, sir.

3 Q And look at the box checked. "You may not request review  
4 of this determination by an immigration judge because the  
5 Immigration and Nationality Act prohibits your release from  
6 custody." Isn't that what it says?

7 A Yes, sir.

8 Q And that's what was given to Mr. Watson. Are you  
9 suggesting that's not true?

10 A It's true here. I've seen in my experience that the  
11 immigration judge will still make a custody determination even  
12 if that box is checked.

13 Q So Mr. Watson was told that he couldn't ask the judge to  
14 review it, but, in fact, that wasn't true?

15 MR. MARUTOLLO: Objection, Your Honor.

16 A I don't know what he was told.

17 Q Well, you can see --

18 A He was served with this paper.

19 Q Right. But you're suggesting to the Court that that's  
20 not true. Even though they told him the judge can't review  
21 it, you're suggesting the judge can.

22 MR. MARUTOLLO: Objection, Your Honor.

23 THE COURT: Can he review it?

24 THE WITNESS: Yes, the judge can. I've seen the  
25 judge --

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1 Q So that document is false?

2 MR. MARUTOLLO: Objection.

3 THE COURT: No, don't characterize it. Don't  
4 answer.

5 Q Is it true or not?

6 MR. MARUTOLLO: Objection.

7 THE COURT: He just said that he can review.

8 MR. FLESSNER: And my question is, then that  
9 document must be false, the document they gave Mr. Watson.

10 THE COURT: That's a conclusion I'll draw.

11 Q Isn't it true that foreign birth alone is not sufficient  
12 to establish probable cause to -- of aliens to arrest an  
13 individual?

14 A Yes. You have to ask more questions. Foreign birth,  
15 there's a lot of people that are legally in the United States  
16 who were born overseas.

17 Q And it's also true that ICE -- in order to arrest Mr.  
18 Watson, ICE needed to establish probable cause to demonstrate  
19 that he was a removable alien; isn't that right?

20 A That is correct.

21 Q And it's the government's burden to establish that  
22 there's probable cause to detain the individual; isn't that  
23 right?

24 MR. MARUTOLLO: Objection; calls for a legal  
25 conclusion.

1 THE COURT: Don't answer.

2 Q Well, is it Mr. Watson's burden to prove that he's a U.S.  
3 citizen?

4 MR. MARUTOLLO: Objection.

5 THE COURT: Don't answer.

6 Q You're familiar with the case matter of Hines?

7 A Yes, sir.

8 Q And it was determined on June 4th of '08; correct?

9 A Yes, sir.

10 Q And that was more than five years after Mr. Watson became  
11 a U.S. citizen; isn't that right?

12 MR. MARUTOLLO: Objection.

13 THE COURT: Sustained.

14 Q Well, Mr. Watson became a U.S. citizen on September 17th  
15 of 2002.

16 MR. MARUTOLLO: Objection.

17 THE COURT: Is that what your view is?

18 THE WITNESS: Well, I think we have to look at the  
19 time period.

20 THE COURT: Or you can say, I am not in a position  
21 to answer.

22 THE WITNESS: I will just say that in January of  
23 2013, when the Board of Immigration Appeals made their  
24 decision, is when I realized that he derived citizenship in  
25 2002.

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1 Q Okay. So it is -- you now agree that he became a citizen  
2 in 2002?

3 A Based on the BIA decision.

4 Q And that was more than five years prior to the matter of  
5 Hines?

6 MR. MARUTOLLO: Objection.

7 THE COURT: Sustained.

8 Q Do you currently have a protocol when a detainee makes a  
9 claim of citizenship?

10 MR. MARUTOLLO: Objection.

11 THE COURT: Don't answer.

12 MR. FLESSNER: I'm sorry?

13 THE COURT: Don't answer.

14 MR. FLESSNER: Okay.

15 Q Is there supposed to be a memo prepared within 24 hours  
16 of a detainee making a claim of U.S. citizenship?

17 A I think the November 2009 memo instructs the field to  
18 prepare a joint memo with Chief Counsel's Office for any  
19 claims to U.S. citizenship.

20 Q Is there anything in any of the directives, the United  
21 States Citizen directives, that allows your officers to ignore  
22 the memos even though another body is investigating the claim  
23 of citizenship?

24 A The memos are directed to ERO officers who encounter a  
25 subject claiming to be a citizen. And so in this case, as we



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1 discussed during my deposition, I know we disagree, but it's  
2 my belief, my interpretation of the guidance that those memos  
3 didn't apply.

4 If I might just add, even if I agreed with your  
5 interpretation, because you seem to believe that once ERO  
6 officers heard that Mr. Watson was claiming to be a citizen in  
7 court that they should have -- were required to comply with  
8 this guidance, even if they did on June 25th or 26th, upon  
9 hearing that we had a subject detained claiming to be a  
10 citizen, they would have conducted an investigation that would  
11 have yielded the exact same facts that were presented to  
12 Citizenship and Immigration Services in July. The facts  
13 haven't changed.

14 Q Right.

15 A The legal interpretation was based on the facts provided.  
16 So that's why I don't know if it's even relevant whether or  
17 not our officers conducted the investigation. The  
18 investigation was already done and the right facts that we all  
19 agree -- I think you pointed out CIS's denial of that N-600  
20 where they list the seven or eight criteria.

21 Well, those are the facts of the case. Whether they  
22 were provided to CIS from us or through other means, CIS would  
23 have made the same determination, their legal interpretation  
24 that he did not derive citizenship.

25 Q So --

SHERRY BRYANT, RMR, CRR

1 THE COURT: Bring your cross to a close, please.

2 MR. FLESSNER: Okay. I am just about done, Your  
3 Honor.

4 Q It's your testimony then that the facts always remained  
5 the same and had the correct legal analysis been applied  
6 originally that Mr. Watson would have been released?

7 MR. MARUTOLLO: Objection.

8 THE COURT: Yes, sustained. Don't answer. Thank  
9 you. Any redirect?

10 MR. MARUTOLLO: No, Your Honor.

11 THE COURT: All right. Thank you, sir. So we'll  
12 start 9:30 tomorrow. You'll have witnesses?

13 MR. MARUTOLLO: Yes, Your Honor.

14 MR. CHO: Your Honor, we have some witnesses that  
15 are out of state. We would like to have them testify by  
16 telephone. Is that okay or do you prefer video?

17 THE COURT: I'm perfectly happy to have them. Work  
18 it out.

19 MR. MARUTOLLO: Your Honor, I believe you had  
20 indicated earlier telephone was sufficient. We've tried to  
21 figure out the video capabilities for the courtroom, but if  
22 telephone is --

23 THE COURT: Check with our technical staff. They're  
24 very adept at doing this. They'll help you.

25 MR. MARUTOLLO: Thank you, Your Honor.

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1 THE COURT: I'd prefer video, but if we can't we'll  
2 take telephone.

3 MR. CHO: Thank you, Your Honor.

4 THE COURT: Good night.

5 MR. MARUTOLLO: Good night, Your Honor.

6 (Whereupon, the proceedings were adjourned until  
7 October 1, 2015 at 9:30 a.m.)  
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SHERRY BRYANT, RMR, CRR

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